

THE UNITED STATES OF AMERICA, APPELLANT,

VERSUS

JOHN J. HENNING, APPEELEE,

AND

THE UNITED STATES OF AMERICA,

APPEELEE,

VERSUS

JOHN J. HENNING, APPEELEE,

THE UNITED STATES OF AMERICA, APPEELEE,

VERSUS

JOHN J. HENNING, APPEELEE, AND THE UNITED STATES OF AMERICA, APPEELEE,

VOLUME II.

HENNING'S TESTIMONY.

PLEADINGS.

Pages 1-42.

(24446 and 24528)





**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.**

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UNITED STATES OF AMERICA, PETITIONER,

against

HAMBURG-AMERIKANISCHE PACKET-  
FAHRT-ACTIEN-GESELLSCHAFT,  
AND OTHERS, DEFENDANTS.

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TESTIMONY.  
VOLUME I.



**Petition of the United States Under  
the so-called Sherman Anti-Trust  
Act.**

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**In the Circuit Court of the United States**

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,  
Petitioner,

vs.

HAMBURG-AMERIKANISCHE PAC-  
KETFAHRT - ACTIEN - GESELL-  
SCHAFT and others,

Defendants.

In Equity.

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*To the Honorable the Judges of the Circuit Court of  
the United States of America for the Southern  
District of New York, sitting in equity:*

Your petitioner, the United States of America,  
by Henry A. Wise, its attorney for the Southern  
District of New York, acting under direction of the  
Attorney General of the United States, brings this  
proceeding in equity against The Allan Line Steam-  
ship Company, Limited, International Mercantile  
Marine Company (American Line), International  
Navigation Company, Limited (American Line), The  
Anchor Line (Henderson Brothers), Limited, Cana-  
dian Pacific Railway Company, The Cunard Steam-  
ship Company, Limited, British and North Atlantic  
Steam Navigation Company, Limited (Dominion  
Line), Hamburg-Amerikanische Packetfahrt-Actien-  
Gesellschaft (Hamburg-American Line), Neder-  
landsh-Amerikaansche Stoomvaart Maatschappij

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(Holland-Amerika Lijn), Norddeutscher Lloyd (North German Lloyd Line), Societe Anonyme de Navigation Belge Americaine (Red Star Line), Russian East Asiatic Steamship Company, Limited (Russian-American Line), Oceanic Steam Navigation Company, Limited (White Star Line), Bryce J. Allan, Phillip A. S. Franklin, John Lee, William Coverley, Charles P. Sumner, Emil L. Boas, Adrian Gips, Gustav H. Schwab, Herman C. Von Post, Gustav H. Schwab, Jr., Alexander E. Johnson and Max Strauss, and on information and belief alleges and shows:

## I.

That the above-named defendants are engaged in foreign trade and commerce as common carriers of passengers and freight, and more particularly of third-class or steerage passengers, between ports and inland points in the United States and ports and inland points in Europe, Asia and Africa, and, in respect thereto, are violating the provisions of the Act of Congress passed July 2, 1890, entitled "*An Act to protect trade and commerce against unlawful restraints and monopolies*" and the Acts amendatory thereof and supplemental thereto, as will hereinafter more fully appear; and this proceeding is instituted to prevent and restrain the hereinafter particularly described agreement, contract, combination and conspiracy in restraint of trade and commerce in the carriage of such steerage passengers between the United States and foreign countries, and the attempts to monopolize, and the contract, combination and conspiracy to monopolize, and the existing monopoly of such trade and commerce as hereinafter described.

## II.

DESCRIPTION OF DEFENDANTS AND THE TRADE AND  
COMMERCE WHICH THEY CONDUCT.

I. At all the times herein mentioned, defendant, The Allan Line Steamship Company, Limited, hereinafter referred to as the "Allan Line," was and now is a corporation organized and existing under and by virtue of the laws of the Kingdom of Great Britain, and, as such, engaged in trade and commerce between the United States of America and foreign nations, to wit, operating regular lines of steamships from ports in England and Scotland, in the Kingdom of Great Britain, to wit, London, Liverpool and Glasgow, to ports in the United States, to wit, Portland, Maine, Boston, Massachusetts, and Philadelphia, Pennsylvania, and transporting between, and to, and from said ports upon its steamships, freight and passengers for hire, and, particularly, that class of passengers ordinarily known and described in the steamship trade as third-class or steerage passengers; and at all such times the Allan Line has maintained agencies in divers cities in Europe and in the United States at which it has sold contracts for the transportation of freight and passengers on and by its steamships to and from the United States and from and to Europe, and has maintained agents in charge of such agencies who have been and now are engaged in soliciting persons to travel to and from Europe upon its said steamships; and in the case of all such passengers transported to the United States from Europe, it has docked its steamships and landed said passengers at one or the other of said ports of Portland, Boston and Philadelphia, and in the case of such passengers transported to Europe, they have embarked at one or the other of said ports.

2. Defendant Bryce J. Allan is a resident of the State of Massachusetts, and is and for many years has been engaged in business under the firm name and style of H. & A. Allan, with an office and place of business at the City of Boston, in the State of Massachusetts; and at all such times has been and now is employed by and acting for the Allan Line in the capacity of general agent and manager of its business in the United States, and, as such general agent, has had and now has charge of the affairs in the United States of the Allan Line in connection with its business aforesaid, and represents himself and his said office, respectively, to be the person with whom and the place at which business may be transacted with the Allan Line.

3. At all the times herein mentioned, defendant International Mercantile Marine Company was and now is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with an office and place of business in the City, County, State and Southern District of New York, where its principal business and affairs are transacted. It holds and votes a majority of the issued and outstanding capital stock respectively of the defendants International Navigation Company, Limited, British and North Atlantic Steam Navigation Company, Limited, Societe Anonyme de Navigation Belge Americaine and Oceanic Steam Navigation Company, Limited.

4. At all the times herein mentioned, defendant International Navigation Company, Limited, was and now is a corporation organized and existing under and by virtue of the laws of the Kingdom of Great Britain, with an office and place of business in the City, County, State and Southern District of New York, where its principal business and affairs in the United States are transacted.

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5. At all the times herein mentioned, defendant International Mercantile Marine Company has owned certain steam vessels which it has been engaged in operating between the Port of New York, in the State of New York, and the port of Philadelphia, in the State of Pennsylvania, and the ports of Southampton and Liverpool, in England; and at all such times defendant International Navigation Company, Limited, has owned certain steamships which it has been engaged in operating between said ports of New York and Philadelphia and said ports of Southampton and Liverpool; and at all such times such steamships so operated by said International Mercantile Marine Company and said International Navigation Company, Limited, between said ports, have been and are known as the American Line; and at all such times said companies have been engaged in transporting between and to, and from said ports, upon their said steamships, freight and passengers for hire, and particularly that class of passengers ordinarily known and described in the steamship trade as third-class or steerage passengers; and at all such times said companies have maintained agencies in divers cities in Europe and in the United States, at which they have sold contracts for the transportation of freight and passengers on and by their steamships to and from the United States and from and to Europe, and have maintained agents in charge of such agencies, who have been and are engaged in soliciting persons to travel to and from Europe upon their steamships; and in the case of all such passengers transported to the United States from Europe, they have docked their steamships and landed said passengers at either the ports of New York or Philadelphia, and in the case of passengers transported by them to Europe, such passengers have embarked upon their steamships at one or the other of said ports.

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6. Defendants Phillip A. S. Franklin and John Lee for some time have been and now are officers of said International Mercantile Marine Company and said International Navigation Company, Limited, to wit, vice presidents thereof; and have been and now are in charge of the office of each of said corporations in the City, County, State and Southern District of New York and of their business and affairs.

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7. At all the times herein mentioned, defendant The Anchor Line (Henderson Brothers), Limited, hereinafter referred to as the "Anchor Line" was and now is a corporation organized and existing under and by virtue of the laws of the Kingdom of Great Britain, and, as such, engaged in trade and commerce between the United States of America and foreign nations, to wit, operating regular lines of steamships from the port of Glasgow, in Scotland, to the port of New York, in the State and Southern District of New York, and transporting between, and to, and from said ports, upon its steamships, freight and passengers for hire, and particularly that class of passengers ordinarily known and described in the steamship trade as third-class or steerage passengers; and at all such times the Anchor Line has maintained agencies in divers cities in Europe and in the United States, at which it has sold contracts for the transportation of freight and passengers on and by its steamships to and from the United States and from and to Europe, and has maintained agents in charge of such agencies who have been and now are engaged in soliciting persons to travel to and from Europe upon its said steamships; and in the case of such passengers transported to the United States from Europe, it has docked its steamships and landed said passengers at the port of New York, and in the case of such passengers transported to Europe, they have embarked upon its steamships at said port.

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8. Defendant William Coverly is a resident of the Borough of Brooklyn, in the City and Eastern District of New York, and is and for many years has been engaged in business in the Southern District of New York, with an office and place of business at No. 17 Broadway, Borough of Manhattan, City and County of New York; and at all such times he has been and now is employed by and is acting for the Anchor Line, in the capacity of general agent and manager of its business in the United States, and, as such general agent, has had and now has charge of the affairs in the United States of the Anchor Line in connection with its business aforesaid, and represents himself and his said office respectively to be the person with whom and the place at which business may be transacted with the Anchor Line.

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9. At all the times herein mentioned, defendant Canadian Pacific Railway Company, hereinafter referred to as the "Canadian Pacific Line," was and now is a corporation organized and existing under and by virtue of the laws of the Dominion of Canada, with an office and place of business and an agent in charge thereof in the City, County, State and Southern District of New York; and at all such times it has been engaged in operating regular lines of steamships from the port of Liverpool, in England, to the ports of Montreal, Quebec, and St. John, in the Dominion of Canada, and continuous, through lines of railway connecting with said steamship lines at the ports of Montreal, Quebec, and St. John, and operating thence through the Dominion of Canada into the United States to divers points within the divers states of the United States, and at all such times has been engaged in transporting, between said points in the United States and the said port of Liverpool, by way of said steamships and railway lines, freight and passengers

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for hire, and particularly that class of passengers ordinarily known and described in the steamship trade as third-class or steerage passengers; and at all such times it has maintained agencies in divers cities in Europe and in the United States at which it has sold contracts for the through transportation of freight and passengers on and by its said steamship and railway lines to and from points in the United States and from and to points in Europe; and it has maintained agents in charge of such agencies who have been and now are engaged in soliciting persons to travel to and from Europe upon said steamship and railway lines.

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10. At all the times herein mentioned, defendant The Cunard Steamship Company, Limited, hereinafter referred to as the "Cunard Line," was and now is a corporation organized and existing under and by virtue of the laws of the Kingdom of Great Britain, with an office and place of business and an agent in charge thereof in the City, County, State and Southern District of New York; and at all such times it has been and now is engaged in trade and commerce between the United States of America and foreign nations, to wit, operating regular lines of steamships from the ports of New York and Boston, in the United States, to the ports of Liverpool, in England, and Fiume and Trieste, in Austria, and transporting between, and to, and from said ports, upon its steamships, freight and passengers for hire, and particularly that class of passengers ordinarily known and described in the steamship trade as third-class or steerage passengers; and at all such times the Cunard Line has maintained agencies in divers cities in Europe and in the United States, at which it has sold contracts for the transportation of freight and passengers on and by its steamships to and from the United States and from and to Europe, and has maintained agents

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in charge of said agencies who have been and now are engaged in soliciting persons to travel to and from Europe, upon its said steamships; and in the case of all such passengers transported to the United States from the said European ports, it has docked its steamships and landed such passengers at either the port of Boston or New York, and in the case of such passengers transported by it to Europe they have embarked upon its said steamships at one or the other of said ports.

11. Defendant Charles P. Sumner is a resident of the City, County, State and Southern District of New York, and is and for many years has been engaged in business as the general agent in the United States of the Cunard Line, with an office and place of business at No. 21 State Street, in the Borough of Manhattan, City and Southern District of New York, and is employed by and is acting for the Cunard Line in the capacity of such general agent and has charge of the affairs in the United States of the Cunard Line in connection with its business aforesaid, and represents himself and his said office respectively to be the person with whom and the place at which business may be transacted with the Cunard Line. 26

12. At all the times herein mentioned, defendant British and North Atlantic Steam Navigation Company, Limited, hereinafter referred to as the "Dominion Line," was and now is a corporation organized and existing under and by virtue of the laws of the Kingdom of Great Britain, with an office and place of business and an agent in charge thereof in the City, County, State and Southern District of New York; and at all such times it has been and now is engaged in trade and commerce between the United States of America and foreign nations, to wit, operating regular lines of steamships from Portland, in the State of 27

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Maine, to Liverpool, in England, and transporting between, and to, and from said ports, upon its steamships, freight and passengers for hire, and particularly that class of passengers ordinarily known and described in the steamship trade as third-class or steerage passengers; and at all such times the Dominion Line has maintained agencies in divers cities in Europe and in the United States, and particularly at the City of New York, in the Southern District of New York, at which it has sold contracts for the transportation of freight and passengers on and by its said steamships to and from the United States and from and to Europe, and has maintained agents in charge of such agencies who have been and now are engaged in soliciting persons to travel to and from Europe, upon its said steamships; and in the case of all such passengers transported to the United States from Europe, it has docked its steamships and landed such passengers at the port of Portland, Maine; and in the case of such passengers transported to Europe they have embarked upon its steamships at said port.

13. At all the times herein mentioned, defendant Hamburg-Amerikanische Packetfahrt-Actien-Gesellschaft, hereinafter referred to as the "Hamburg-American Line," was and now is a corporation organized and existing under and by virtue of the laws of the City of Hamburg, in the Empire of Germany, with an office and place of business and an agent in charge thereof in the City, County, State and Southern District of New York; and at all such times it has been and now is engaged in trade and commerce between the United States of America and foreign nations, to wit, operating regular lines of steamships between the port of New York, in the United States, and the port of Hamburg, in Germany, and transporting between, and to, and from said ports, upon its steam-

ships, freight and passengers for hire, and particularly that class of passengers ordinarily known and described in the steamship trade as third-class or steerage passengers; and at all such times it has maintained agencies in divers cities in Europe and in the United States at which it has sold contracts for the transportation of freight and passengers on and by its steamships to and from the United States and from and to Europe, and has maintained agents in charge of said agencies who have been and now are engaged in soliciting persons to travel to and from Europe, upon its said steamships; and in the case of all such passengers transported to the United States from the said European ports, it has docked its steamships and landed such passengers at the port of New York, and in the case of such passengers transported to Europe, they have embarked upon its steamships at said port.

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14. Defendant Emil L. Boas is a resident of the City, County, State and Southern District of New York, and is and for many years has been engaged in business as resident director and general manager in the United States of the Hamburg-American Line, with an office and place of business at No. 45 Broadway, in the Borough of Manhattan, City, County, State and Southern District of New York; and at all such times he has been and now is employed and acting as such resident director and general manager in the United States of the business of the Hamburg-American Line, and has charge of its affairs in the United States in connection with its business aforesaid, and represents himself and his said office respectively to be the person with whom and the place at which business may be transacted with the Hamburg-American Line.

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15. At all the times herein mentioned, defendant Nederlandsh-Amerikaansche Stoomvaart Maatschap-

pij (Holland-Amerika Lijn), hereinafter referred to as the "Holland-America Line," was and now is a corporation organized and existing under and by virtue of the laws of the Kingdom of The Netherlands, with an office and place of business and an agent in charge thereof in the City, County, State and Southern District of New York; and at all such times it has been and now is engaged in trade and commerce between the United States of America and foreign nations, to wit, operating regular lines of steamships from the port of New York, in the State of New York, to the port of Rotterdam, in Holland, and transporting between, and to, and from said ports, upon its steamships, freight and passengers for hire, and particularly that class of passengers ordinarily known and described in the steamship trade as third-class or steerage passengers; and at all such times the Holland-America Line has maintained agencies in divers cities in Europe and in the United States, at which it has sold contracts for the transportation of freight and passengers on and by its steamships to and from the United States and from and to Europe, and has maintained agents in charge of said agencies who have been and now are engaged in soliciting persons to travel to and from Europe, upon its said steamships; and in the case of all such passengers transported to the United States from the said European ports, it has docked its steamships and landed such passengers at the port of New York, and in the case of such passengers transported by it to Europe they have embarked upon its said steamships at said port.

16. Defendant Adrian Gips is a resident of the County, State and Southern District of New York, and is and for many years has been engaged in business, in the Southern District of New York, as the general agent of the Holland-America Line, with an

office and place of business at No. 39 Broadway, in the Borough of Manhattan, City, County, State and Southern District of New York; and at all such times he has been and now is employed and acting as such general agent in the United States of the business of the Holland-America Line, and has charge of its affairs in the United States in connection with its business aforesaid, and represents himself and his said office respectively to be the person with whom and the place at which business may be transacted with the Holland-America Line.

17. At all the times herein mentioned, defendant 38  
 Norddeutscher Lloyd, hereinafter referred to as the "North German Lloyd Line," was and now is a corporation organized and existing under and by virtue of the laws of the City of Bremen, in the Empire of Germany, with an office and place of business and an agent in charge thereof in the City, County, State and Southern District of New York; and at all such times it has been and now is engaged in trade and commerce between the United States of America and foreign nations, to wit, operating regular lines of steamships from the ports of Baltimore, in the State of Maryland, and New York, in the State of New York, to the port of Bremen, in Germany, and transporting between, and to, and from said ports, upon its steamships, freight and passengers for hire, and particularly that class of passengers ordinarily known and described in the steamship trade as third-class or steerage passengers; and at all such times it has maintained agencies in divers cities in Europe and in the United States at which it has sold contracts for the transportation of freight and passengers on and by its steamships, to and from the United States and from and to Europe, and has maintained agents in charge of said agencies who have been and now are 39

engaged in soliciting persons to travel to and from Europe, upon its said steamships; and in the case of all such passengers transported to the United States from the said European port, it has docked its steamships and landed such passengers at either the port of New York or Baltimore, and in the case of such passengers transported to Europe, they have embarked upon its steamships at one or the other of said ports.

18. Defendants Gustav H. Schwab, Herman C. Von Post and Gustav H. Schwab, Jr., are residents of the City, County, State and Southern District of New York, and are partners doing business under the firm name and style of Oelrichs & Company, with an office and place of business at No. 5 Broadway, New York City. They are and for many years have been general agents in the United States of the North German Lloyd Line, and in general charge of its affairs within the United States, and hold themselves and their office out to the public as the persons with whom and the place at which business may be transacted with the North German Lloyd Line.

19. At all the times herein mentioned, defendant Societe Anonyme de Navigation Belge Americaine, hereinafter referred to as the "Red Star Line," was and now is a corporation organized and existing under and by virtue of the laws of the Kingdom of Belgium, with an office and principal place of business and an agent in charge thereof in the City, County, State and Southern District of New York; and at all such times has been and now is engaged in trade and commerce between the United States of America and foreign nations, to wit, operating regular lines of steamships from the ports of New York and Philadelphia, in the United States, to the port of Antwerp, in Belgium, and transporting between, and to, and from said ports, upon its steamships, freight and passengers for hire,



and particularly that class of passengers ordinarily known and described in the steamship trade as third-class or steerage passengers; and at all such times it has maintained agencies in divers cities in Europe and in the United States at which it has sold contracts for the transportation of freight and passengers on and by its steamships to and from the United States and from and to Europe, and has maintained agents in charge of said agencies who have been and now are engaged in soliciting persons to travel to and from Europe, upon its said steamships; and in the case of all such passengers transported to the United States from the said European port, it has docked its steamships and landed such passengers at either of the ports of New York or Philadelphia, and in the case of such passengers transported to Europe, they have embarked upon its steamships at said ports.

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Defendant International Mercantile Marine Company is the general agent in the United States of the Red Star Line, and the Red Star Line holds out the office of the International Mercantile Marine Company in the City, County, State and Southern District of New York as the place at which it transacts business.

20. At all the times herein mentioned, defendant, Russian East Asiatic Steamship Company, Limited, hereinafter referred to as the "Russian-American Line," was and now is a corporation organized and existing under and by virtue of the laws of the Empire of Russia, with an office and place of business and an agent in charge thereof in the City, County, State and Southern District of New York; and at all such times it has been and now is engaged in trade and commerce between the United States of America and foreign nations, to wit, operating regular lines of steamships from the port of New York, in the United

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States, to the port of Libau, in Russia, and transporting between, and to, and from said ports, upon its steamships, freight and passengers for hire, and particularly that class of passengers ordinarily known and described in the steamship trade as third-class or steerage passengers; and at all such times it has maintained agencies in divers cities in Europe and in the United States at which it has sold contracts for the transportation of freight and passengers on and by its steamships to and from the United States and from and to Europe, and has maintained agents in charge of said agencies who have been and now are engaged in soliciting persons to travel to and from Europe, upon its said steamships; and in the case of all such passengers transported to the United States from the said European port, it has docked its steamships and landed such passengers at the said port of New York, and in the case of such passengers transported to Europe, they have embarked upon its steamships at said port.

21. Defendants Alexander E. Johnson and Max Strauss are residents of the City, County, State and Southern District of New York, and are copartners trading and doing business under the firm name and style of A. E. Johnson & Company, with an office and place of business at No. 1 Broadway, Borough of Manhattan, City and Southern District of New York. They are and for some time past have been the general agents in the United States of the Russian-American Line, and in general charge of its affairs and business with the United States, and held themselves and their office out to the public as the persons with whom and the place at which business may be transacted with the Russian-American Line.

22. At all the times herein mentioned, defendant, Oceanic Steam Navigation Company, Limited, hereinafter referred to as the "White Star Line," was and

now is a corporation organized and existing under and by virtue of the laws of the Kingdom of Great Britain, with an office and place of business and an agent in charge thereof in the City, County, State and Southern District of New York; and at all such times it has been and now is engaged in trade and commerce between the United States of America and foreign nations, to wit, operating lines of steamships from the ports of New York and Boston, in the United States to the ports of Liverpool and Southampton, in England, and transporting between, and to, and from said ports, upon its steamships, freight and passengers for hire, and particularly that class of passengers ordinarily known and described in the steamship trade as third-class or steerage passengers; and at all such times it has maintained agencies in divers cities in Europe and in the United States at which it has sold contracts for the transportation of freight and passengers on and by its steamships to and from the United States and from and to Europe, and has maintained agents in charge of said agencies who have been and now are engaged in soliciting persons to travel to and from Europe, upon its said steamships; and in the case of all such passengers transported to the United States from the said European ports, it has docked its steamships and landed such passengers at either the port of New York or Boston, and in the case of such passengers transported to Europe, they have embarked upon its steamships at one or the other said ports.

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Defendant, International Mercantile Marine Company, is the general agent in the United States of the White Star Line, and the White Star Line holds out the office of the International Mercantile Marine Company, in the City, County and Southern District of New York, as the place at which it transacts business.

23. The corporations hereinbefore described will hereinafter be referred to collectively as "defendant steamship lines."

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24. The defendant steamship lines, by virtue of their separate corporate organization and the ports between which their lines or steamships are run, as hereinbefore set forth, are and should be natural competitors in the business of furnishing facilities for the aforesaid steerage passenger traffic and but for the existence of the unlawful combination, contract and conspiracy, hereinafter more fully described, and the enforcement and fulfillment of the terms and purposes thereof, said defendant steamship lines, and each of them, would be actively competing with all of the others in the said business.

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## III.

DESCRIPTION OF THE TRADE AND COMMERCE WHICH THE DEFENDANTS ARE MONOPOLIZING AND ATTEMPTING AND CONSPIRING TO MONOPOLIZE.

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The public lands of the United States have been since the day the Government was formed, the one possession more coveted than any other in the world by the peasant and artisan of Europe seeking a proprietorship and personal importance here which they could not hope for in their native countries. The resulting annual influx of population from all parts of Europe to the United States has steadily increased until the traffic back and forth is very large and very lucrative. The return travel results from the desire of immigrants to return to their European homes, either to bring over members of their families to this country or merely to revisit them. With the increase of this traffic, the steamship companies have extended their facilities for handling it until the income from the third-class or steerage rates between Europe and North America is one of the most important parts of their revenue.

The average number of immigrants coming to this country annually from Europe, at third-class or steerage rates, for the five years last past, has been 1,200,000, and the average of emigrants returning annually to Europe during the same period has been approximately 500,000. The resultant revenue to the steamship companies handling this traffic has been approximately \$55,000,000 per annum, and during this period an increasingly large amount has been expended in the United States by immigrants in the purchase of tickets for relatives in Europe to enable them to come to America.

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## IV.

THE COMBINATION AND CONSPIRACY IN WHICH DEFENDANTS ARE ENGAGED.

The defendants for some time past have been and now are engaged in the United States, and particularly in the Southern District of New York, in an unlawful combination and conspiracy to restrain a part of the trade and commerce of the United States with foreign nations, and to monopolize the same, that is to say, they are and for some time have been engaged [in the said Southern District of New York], in a combination and conspiracy to destroy all competition among and between themselves in the business of transporting third-class or steerage passengers, by steamships, between ports in the United States of America and ports in Europe, and in and by eliminating, suppressing and destroying all competition in such traffic by any and all persons and corporations other than themselves, the objects of which said combination and conspiracy they are seeking and have sought to accomplish in the manner and by the means hereinafter set forth.

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*Petition*

## V.

THE MANNER AND MEANS OF ACCOMPLISHING THE  
UNLAWFUL COMBINATION AND CONSPIRACY.

## A

*Terms of Agreement upon formation of the unlawful combination and conspiracy, and the amendments thereto:*

- 59 1. February 5, 1908, at the City of London, in England, defendant the Allan Line, the Anchor Line, the Cunard Line, the Hamburg-American Line, the Holland-America Line, North German Lloyd, the Red Star Line, International Mercantile Marine Company, White Star Line, the International Navigation Company, Limited, the Dominion Line and the Canadian Pacific Line entered into said unlawful combination and conspiracy in and by the execution of an unlawful contract, a copy of which is hereto annexed, and marked Exhibit A, and prayed to be considered as a part hereof, as if here set forth in full, wherein and whereby each of them became a member of a voluntary association under the name and style of the "Atlantic Conference," which said association was to  
60 maintain an office with a person in charge thereof who should be and is designated and described as "Secretary."

2. Under the terms of this contract, these lines agreed to divide and share in the entire steerage traffic forwarded by all of them between all European ports and the United States and Canada with the exception of traffic consisting of Italian and Oriental (*i. e.*, passengers to and from Greece, Africa and Asia), steerage passengers, forwarded by direct steamers through the Straits of Gibraltar according to the following percentages:

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<i>West Bound.</i>	<i>Per cent.</i>	
Allan Line	.62	
Anchor Line	3.40	
Cunard Line	13.75	
Hamburg-American Line	19.61	
Holland-America Line	6.63	
North German Lloyd	26.53	
Red Star Line	9.71	
International Mercantile Marine Co.		
White Star Line	8.60	
American Line	6.68	
Dominion Line	4.47	62
Total		
	100.00	

<i>East Bound.</i>		
Allan Line	4.95	
Anchor Line	3.93	
Cunard Line	12.77	
Fiume Trieste Service	2.35	
Hamburg-American Line	12.35	
Holland-America Line	6.10	
North German Lloyd	18.79	
Red Star Line	8.56	
International Mercantile Marine Co.		
White Star Line	15.49	63
American Line	8.72	
Dominion Line	1.50	
Canadian Pacific Line	4.49	

3. By the terms of this contract they further agreed, that each of them which in any year should carry steerage passengers in excess of the aforesaid agreed percentage should pay a compensation price of four pounds Sterling for each excess steerage passenger so carried by it, and that the total of the compensa-

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tion money so paid should be divided among the lines, parties to the agreement, which had failed to carry their agreed percentage of such steerage passengers in proportion to the number of steerage passengers which each such line should be short; that a provisional settlement of such compensation money should be made between the lines each month and a final settlement at the end of each year on the basis of periodic accounts kept and rendered to the lines by the Secretary of the association.

4. By the terms of this contract it was further  
65 agreed that a majority of the lines entitled thereunder to at least seventy-five per cent of the total agreed shares in said steerage traffic should have the right, from time to time, to raise or lower the above described compensation price of four pounds Sterling, the expressed intention of the contracting parties being that such compensation price should be raised as the average steerage rate was raised, and should be lowered if the average steerage rate should be lowered, so that such compensation price would, at all times, be sufficient to deter each and any of the contracting parties from attempting to carry more than its agreed percentage of such steerage traffic and at  
66 the same time it should not be sufficiently high to offer an inducement to any of them to refrain from carrying its agreed share.

5. By the terms of this contract it was further agreed that whenever said monthly accounts showed that any of the lines had exceeded or remained below its agreed percentage of said traffic, such line should at once either raise or lower its steerage rate so that the number of steerage passengers carried by it should again amount to its agreed percentage of the total steerage traffic covered by the contract, and that in the event that in the opinion of a majority of the



lines, parties to the agreement, controlling thereunder at least seventy-five per cent of said steerage traffic, if the measures so adopted were not sufficiently drastic to accomplish said intended result, such majority should have the right to direct such line to take more drastic measures to bring the number of steerage passengers carried by it into accordance with its agreed percentage; and it was further agreed to be the sense of the contracting parties that such adjustment should be secured, whenever practicable, by raising the steerage rates of one or several of said defendant steamship lines rather than by lowering such rates by any of them.

68

6. By the terms of this contract each of said lines further agreed to and each of them thereafter did deposit with the Secretary of the association, as a guarantee of the performance of the provisions of the contract, a negotiable promissory note in the sum of One thousand pounds Sterling for each one per cent of its agreed proportion in the traffic covered by the contract, and by said contract each line agreed that the entire sum so deposited by it should be forfeited upon its unauthorized withdrawal from the association before its termination, or upon its refusal to pay compensation money, or its failure to replenish its deposit in case it should become impaired by payment of penalties, as hereinafter described, or its starting or assisting any new line in competition with all or any of the contracting lines in such traffic.

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7. By the terms of this contract it was further agreed that all disputes arising thereunder, between any of the parties thereto, should be settled by an arbitrator or arbitrators; that such arbitrator or arbitrators should have power to impose upon any of the lines, for violation of any of the provisions of this contract, penalties in amounts not less than two hun-

dred and fifty pounds Sterling for each such violation and not less than two thousand five hundred pounds Sterling for each wilful or intentional violation, and that in case the amount of such penalty should not be paid within eight days after its imposition, the above described deposit of the line against which such penalty was imposed should be drawn upon for the amount of such penalty.

- 71 8. By the terms of this contract, it was further agreed that new lines might thereafter be admitted to the contract and association and the terms of the contract altered, from time to time, by the unanimous vote of all the parties thereto.

9. By the terms of this contract the lines further agreed that for the discussion of questions arising under the terms of the contract, for the discussion of proposed amendments thereto and of the proposed admission of other lines to the terms thereof, meetings of the contracting parties should be held from time to time at various places in Europe.

#### B.

- 72 *Defendant The Russian-American Line becomes a party to the illegal contract.*

Pursuant to the provisions of the aforesaid unlawful contract and in furtherance of the aforesaid unlawful combination and conspiracy, on or about September 1st, 1909, at a meeting held by all the other defendant steamship lines at the City of Cologne, Germany, defendant, the Russian-American Line, was duly admitted to membership in the Atlantic Conference and to all the provisions of said contract. Petitioner is unable to state what percentage of the said steerage traffic, it was thereupon agreed that the said Russian-American Line should be entitled to, but your

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petitioner is informed and believes that the shares of all the lines, parties to said contract, were in some respects altered so as to provide a percentage of such traffic for the Russian-American Line.

By the terms of said unlawful contract of February 5, 1908, and the amendment thereto whereby the Russian-American Line was admitted to the Atlantic Conference and to the terms and provisions of said contract, the provisions thereof are extended to remain effective and binding upon the contracting parties up to and including February 28th, 1911; and thereafter, to remain effective and binding upon said parties from year to year unless notice of intention to withdraw from the terms thereof at the end of any year shall be given by one or more of the parties thereto on or before the first day of December of the year in which such notice is given.

74

## C.

*Acts pursuant to the unlawful agreement, and to effect the purpose of the unlawful combination and conspiracy.*

1. Ever since the adoption of the aforesaid unlawful contract the business of all and every of said defendant steamship lines, in so far as it consists in the carriage of the steerage traffic referred to therein, has been and at the date of filing this petition is carried on by each and every of them in all respects in accordance with the terms and provisions thereof and in accordance with the terms and provisions of resolutions adopted by said contracting parties at meetings held in pursuance thereof, and all free and natural competition between said lines in the establishment of rates and the furnishing of facilities for such steerage traffic, has been and is thereby wholly eliminated.

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2. The successful accomplishment of the objects

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of said unlawful agreement, and said unlawful combination and conspiracy thereby entered into, necessarily involved the execution of the terms, scope and intent of said agreement throughout the United States, and more particularly in the Southern District of New York. And ever since February 5th, 1908, for the effective accomplishment of the objects aforesaid, each of the individual defendants herein has been and is designated and established by his respective line at his respective office in the United States, as agent for such line, to carry out and make effective the terms, objects and intent of said unlawful agreement, combination and conspiracy, in the United States. And said individual defendants, at their respective offices and agencies throughout the United States, and more particularly in the Southern District of New York, at all times herein mentioned, down to the time of the filing of this petition, have almost daily carried out and executed acts necessary for the successful accomplishment of said unlawful combination and conspiracy.

77

3. And at all such times all of said individual defendants, at the Southern District of New York, have received orders and instructions from their respective principals, in respect to the accomplishment of the objects and purposes of said unlawful combination and conspiracy, and each and all of them have within said Southern District of New York, complied with and carried out such instructions.

78

*Agreement to destroy competition of independent lines.*

In and for the execution of said unlawful combination and conspiracy, and in furtherance thereof, all of the defendant steamship lines, at a meeting held March 25th, 1908, agreed that they should act together to eliminate and destroy the competition of any and all persons and corporations that might then or

thereafter operate lines of steamships and carry steerage passengers between Europe and the United States in competition with all or any of defendant steamship lines in the traffic covered by the terms of the aforesaid unlawful agreement.

*Arrangement to use so-called "fighting-steamers" to destroy competition.*

In and for the execution of the aforesaid resolution and for the purpose of effecting the objects of said unlawful combination and conspiracy, said defendant steamship lines at said meeting appointed three of their representatives at New York City to act as a committee for and on behalf of all of them at the City of New York, for the selection from among the steamships belonging to said defendants of so-called "fighting steamers" to sail eastbound from the Port of New York, to European ports whenever steamships operated by competing lines should be scheduled to sail, and said committee was authorized, empowered and directed to fix and change, from time to time on short notice, the advertised rates at which third-class or steerage passengers should and would be carried on such "fighting steamers," which was to be done in order effectually to meet and under-cut any rate and any decrease in rate adopted by such competitor or competitors. And said committee was further authorized, empowered and directed to select from among the steamships belonging to the defendant steamship lines and scheduled to sail on or about the same date or dates as such "fighting steamers," to carry the persons who might be booked for passage as steerage passengers on such "fighting steamers" in excess of their carrying capacity; and it was provided that such excess passengers should be carried by such steamships so selected at the advertised steerage rate of such "fighting steamers." It was further agreed

by the defendant steamship lines under the terms of said resolution that the line or lines carrying such excess steerage passengers at such reduced rates should be compensated by the other defendant steamship lines by payments, amounting for each passenger so carried to the difference between the regular advertised steerage rate of such line and such reduced rate.

*Competitors are crushed.*

83

Upon the adoption of said resolution the above described method of competition was at once employed by the defendant steamship lines, then parties to said unlawful contract combination and conspiracy, to meet and suppress competition in said steerage traffic by a line of steamships then operating and carrying third-class or steerage passengers between the Port of New York and the Port Libau in Russia, under the name and style of the Russian Volunteer Fleet and by defendant, the Russian-American Line which was not at that time a party to said unlawful contract, combination and conspiracy.

*The Russian Volunteer Fleet is driven out of business.*

84

From the month of March until the month of June, 1908, said Russian Volunteer Fleet frequently advertised its steamships to sail from the Port of New York to the Port of Libau in Russia and advertised for and solicited persons to sail as third-class or steerage passengers upon such ships, which ships were thoroughly equipped for handling such traffic; and as regularly as such ships were so advertised to sail the aforesaid committee of three representatives, in the City of New York, of defendant steamship lines, selected a so-called "fighting steamer" and advertised the same to sail from the Port of New York to said Port of Libau on or about the day that the ship of

the Russian Volunteer Fleet was so advertised to sail, and advertised the rate for steerage or third-class passengers at a sum less than that advertised by the Russian Volunteer Fleet, and such rate was in each such instance so low that said Russian Volunteer Fleet could not profitably compete therewith.

Owing to such unfair and unlawful competition said Russian Volunteer Fleet incurred serious financial loss in the conduct of its third-class or steerage traffic, and in the month of July, 1908, to the great detriment and loss to the public and to persons desiring to procure third-class or steerage transportation between New York and Russia, said Russian Volunteer Fleet withdrew its steamships from said service between the Ports of New York and Libau and has ever since ceased to operate said line.

86

*The Russian-American Line is driven out of competition and forced into the unlawful combination and conspiracy.*

From the month of March until the month of September, 1908, defendant, the Russian-American Line, was independently engaged in operating its line of steamships from the Port of New York to the Port of Libau in Russia and in carrying thereon third-class or steerage passengers in competition with all of the other defendant steamship lines, and frequently during said period it advertised its steamships to sail from said port of New York and advertised for and solicited persons to travel upon its ships as third-class or steerage passengers, and in each such instance the aforesaid committee of three, selected a so-called "fighting steamer" and advertised the same to sail at or about the same time as the ships of the Russian-American Line, and advertised the third-class or steerage rates thereon at far less than the rate therefore upon the steamer of the Russian-American Line, and

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such rate was so low that the Russian-American Line could not profitably compete therewith.

- 89 Owing to this unfair and unlawful competition, the Russian-American Line incurred serious financial loss in the conduct of its third-class or steerage traffic and in order to be permitted to continue in said business it unlawfully and wrongfully sought admission to the aforesaid unlawful combination and conspiracy and in or about the month of September, 1908, signed and became a party to the aforesaid unlawful contract of February 5, 1908, and was accorded by the other defendant steamship lines a certain percentage of said steerage traffic which it has ever since been permitted to handle and transport upon its steamships without further interference or molestation, and ever since it has been conducting its said business, trade and commerce in concert and harmony and free from competition with said other defendant steamship lines, and under and pursuant to and in accordance with the aforesaid unlawful contract, combination and conspiracy, to the great loss and detriment of the People of the United States.

*Unfair competition against the Uranium Steamship Company.*

- 90 About April 1st, 1909, the Uranium Steamship Company, Limited, a corporation organized and existing under and by virtue of the laws of the Kingdom of Great Britain, began to operate and has ever since operated a regular line of steamships under the name and style of the North West Transport Line, between the Ports of New York and Rotterdam, and began to carry and has ever since carried third-class or steerage passengers thereby between the said ports; and at all such times it has operated its said steamships in an endeavor to compete with the defendant steamship lines in the carriage of third-class or steer-



age passengers, and has endeavored to obtain a share in such traffic without being a party to the aforesaid unlawful contract of February 5, 1908, and to the aforesaid unlawful combination and conspiracy among the defendant steamship lines.

In and for the further execution of the aforesaid unlawful combination and conspiracy, and pursuant to resolution of March 25th, 1908, hereinbefore mentioned, the defendant steamship lines on or about the first day of April, 1909, authorized and directed the aforesaid committee of three, in New York City, to select "fighting steamers" to carry third-class or steerage passengers at cut rates against the steamships of said North West Transport Lines on behalf of all the defendant steamship lines.

92

In the month of March, 1910 (after the Government instituted an inquiry into the affairs and conduct of the defendant steamship lines), the aforesaid committee of three in New York, it is said was disbanded, but the above described unlawful methods adopted by the defendant steamship lines to eliminate competition with them in the carriage of steerage passengers by said North West Transport Line, are continued and now are in force except that since March, 1910, the said "fighting steamers" are selected and their rates for steerage transportation altered from time to time by the defendant steamship lines in Europe and notices of such action are now sent by them to the individual defendants representing them in this country, and such cut rates for such "fighting steamers" are and since March, 1910, have been put in force by notices sent out by the individual defendants to the agents throughout the United States for the sale of tickets for third-class steerage transportation on such lines.

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Owing to the above described illegal and oppressive measures adopted in concert by the defendant

*Petition*

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steamship lines for the purpose of excluding said North West Transport Line from a participation in said traffic and effectuating the restraint and monopoly of the said traffic pursuant to the aforesaid unlawful combination and conspiracy said North West Transport Line has at all times since the institution of its said service been prevented from obtaining a fair and reasonable share of said traffic and has been forced to carry such of it as it has secured at a financial loss.

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Further, in pursuance of the aforesaid unlawful combination and conspiracy and to prevent other persons and corporations from engaging in the traffic covered thereby, the defendant steamship lines have agreed that no one of them shall continue in its employ as agent for the sale of tickets over its line, any person who shall act as agent for the sale of third-class or steerage tickets over any independent line in competition with said defendants' lines; this agreement is now in force and the measures provided for thereunder are today employed by the individual defendants within the United States and particularly in the Southern District of New York for and on behalf of the defendant steamship lines, and particularly as a part of the above described illegal and oppressive attack upon the said North West Transport Line.

96

*Excessive and arbitrary rates are charged by defendants for steerage transportation.*

At all times since the formation of the aforesaid unlawful combination and conspiracy (and since the adoption of the aforesaid unlawful contract), and the institution of the practices hereinbefore referred to as adopted in pursuance thereof, each and all of the defendant steamship lines, in pursuance of said combination, conspiracy and contract, have arbitrarily fixed their rates for steerage transportation so as to

bring about the arbitrary division of traffic hereinbefore referred to and at the same time to maintain rates at that artificial level at which said traffic so monopolized may be made to yield the highest net return to them, and by such action in fixing said rates they have deprived and are depriving the public of the benefit of the normal division of traffic between persons and corporations engaged in such traffic, according to the needs and convenience of the public, that would naturally have resulted from free competition among persons and corporations engaged in such traffic, and of the benefit of the lower scale of rates for such traffic that would normally have resulted from free competition among such persons and corporations, and of the benefit of superior facilities for such traffic that would normally have been provided as a result of said competition.

98

*Penal enforcement of the terms of the unlawful contract.*

Ever since the formation of the aforesaid unlawful combination and conspiracy (and the adoption of the aforesaid unlawful contract), each and all of the defendant steamship lines has been constrained to conduct its steerage business in all respects in compliance with the terms and provisions of said contract under duress of loss of membership in said conspiracy for failure to observe and carry out the provisions of said contract and of the consequent forfeiture of the money deposit made by it under said contract and of the exposure of such line to the combined attack upon it by all the other defendant steamship lines by the practices hereinbefore described.

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*Petition*

## VI.

## MONOPOLY RESULTING FROM CONSPIRACY.

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By the aforesaid unlawful contract and the unlawful practices hereinbefore described as instituted by the defendant steamship lines to effect the objects of the aforesaid unlawful combination and conspiracy, the defendant steamship lines have obtained and attempted to obtain a virtual monopoly of that part of the traffic of transporting steerage passengers in trade and commerce between the United States and foreign nations that was included within the scope and objects of said conspiracy, and at the date of filing this petition upwards of ninety per cent of the total third-class or steerage passenger traffic between Europe and North America is carried in ships belonging to the defendant steamship lines and upwards of seventy-five per cent of such total steerage passenger traffic is regulated, limited and restrained by means of the aforesaid unlawful contract of February 5th, 1908.

## VII.

## PRAYER.

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In consideration whereof, and inasmuch as petitioner can only have adequate relief in the premises in this honorable Court, where matters of this nature are properly cognizable and relieviable, your petitioner prays:

1. That the aforesaid unlawful combination and conspiracy and the aforesaid contract entered into and continued by the defendants as set forth herein, be declared illegal and in violation of the Act of Congress passed July 2, 1890, entitled "*An Act to*

*protect Trade and Commerce against unlawful restraints and Monopolies"* and the Acts supplemental thereto and amendatory thereof, and that an injunction issue restraining and prohibiting the defendants and each, every and all of them and their officers, servants, employees, attorneys and agents from doing any act in pursuance or in furtherance thereof by the means herein described, or by any other means, and be required to desist and withdraw from all connection with the same, and that they and each of them be required and compelled to cancel and abate said unlawful contract.

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2. That each, every and all of said defendant steamship lines be enjoined, restrained and forbidden either to enter or clear any of their ships or vessels at the Port of New York or at any other Port of Entry within the United States of America or any of its possessions so long as it shall continue to operate pursuant to or co-operate with any of the other defendants under the aforesaid unlawful combination and conspiracy, or under or pursuant to any such or similar combination and conspiracy.

3. That the defendants and all and each of them, their officers, servants, employees, attorneys and agents be enjoined and prohibited from further agreeing, combining, conspiring and acting together to establish and maintain rules, regulations and rates for carrying steerage passengers upon the several steamships operated by the defendant steamship lines or any of them, between ports in the United States and European ports, in restraint of the trade and commerce of the United States with foreign nations, and from entering into or continuing in, or doing anything in aid of any combination, association, contract or conspiracy to deprive the people traveling between points in the United States and European ports, of such

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facilities and rates for steerage transportation as will be afforded by free and unrestrained competition among said defendant steamship lines, or any of them.

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4. That the defendants and all and each of them, their officers, servants, employees, attorneys, and agents, be enjoined and prohibited from further agreeing, combining, conspiring or acting together to injure or destroy the business of any person or corporation engaged in or who may at any time hereafter be engaged in the business of carrying steerage passengers between points in the United States and European ports, and from further agreeing, combining, conspiring or acting together to monopolize the said steerage traffic in the trade and commerce between the United States and foreign nations or any part thereof.

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5. That the defendants and each of them, their officers, agents, attorneys, servants and employees be enjoined and prohibited from entering into, or taking part in, or performing any contract, combination or conspiracy, the object, purpose or effect of which will be a restraint of, or a monopolization or attempt to monopolize trade and commerce in the transportation of steerage passengers between the United States and foreign nations, in violation of the provisions of the Act of Congress approved July 2, 1890, entitled "*An Act to protect Trade and Commerce against unlawful restraint and Monopolies*" and the Acts amendatory thereof or supplemental thereto, either by agreeing or contracting together or with one another expressly or impliedly, directly or indirectly, as to the prices at which the said service of transportation of steerage passengers shall be rendered or as to a division of said traffic, or by agreeing or contracting together, or with one another, with a view to the imposition of any burden or limitation upon the service of transporting steerage passengers, or by contract-

ing or agreeing together, or with one another, expressly or impliedly, directly or indirectly, to contribute to any pool or general fund, any part of the proceeds of such transportation, or to maintain any such pool or general fund made from such contributions.

6. That upon the filing of this petition, an injunction or restraining order be granted, restraining the defendants and each of them in the manner expressly set forth in Paragraphs 1 to 5, inclusive, of this prayer.

7. That your petitioner have such other further and general relief as to this honorable Court may appear to be meet and proper.

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8. To the end that said defendants may, if they can, show why your petitioner should not have the relief herein prayed for, and may, according to their best and utmost knowledge, remembrance, information and belief, full, true, direct and perfect answer make but not under oath, answer under oath being hereby expressly waived, to each and all matters in this bill contained, and that as fully as if the same were here repeated paragraph by paragraph and they were specially interrogated thereunto severally, may it please your Honors to grant to your petitioner a writ of subpoena and respondendum issuing out of and under the seal of this Court, to be directed to said defendants and each of them, commanding them and each of them on a certain day and under a certain penalty to be therein inscribed, to appear before your Honors in this Court, and then and there full, true, direct and perfect answer make to all and singular the premises herein set forth and further to stand, to perform and abide by such further order or decree

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as to your Honors shall seem meet, and your petitioners  
will ever pray.

HENRY A. WISE,

United States Attorney,

For the Southern District of New York.

GEORGE W. WICKERSHAM, Solicitor for Petitioner,  
Attorney General.

HENRY A. WISE,

United States Attorney.

113 GOLDTHWAITE H. DORR,

WOLCOTT H. PITKIN,

JOHN W. H. CRIM,

FELIX FRANKFURTER,

Assistant United States Attorneys

For the Southern District of New York.

Of Counsel.

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**Exhibit A.**

## AGREEMENT A. A.

## CONTRACT.

Between the following Transatlantic Steamship Lines, namely:—

1. The ALLAN LINE STEAMSHIP CO., Limited, Glasgow;
2. The ANCHOR LINE (Henderson Brothers), Limited, Liverpool; 116
3. The CUNARD STEAMSHIP COMPANY, Limited, Liverpool;
4. HAMBURG-AMERIKANISCHE PACKET-FAHRT ACTIEN-GESELLSCHAFT, Hamburg;
5. The NEDERLANDSCH AMERIKAANSCH E STOOMVAART MAATSCHAPPIJ, Rotterdam;
6. NORDDEUTSCHER LLOYD, Bremen;
7. SOCIETE ANONYME DE NAVIGATION BELGE AMERICAINE (Red Star Line), Antwerp; 117
8. INTERNATIONAL MERCANTILE MARINE COMPANY (except the Societe Anonyme Belge Americaine, Red Star Line, in Antwerp), New Jersey;
9. CANADIAN PACIFIC RY. CO., (Atlantic Steamship Lines), Montreal.

the following contract has this day been concluded:

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## ARTICLE 1.

119 The Companies before named guarantee to each other the percental participation as defined and provided for in Article 3 of this Contract of the entire steerage traffic forwarded by the parties to this Contract from all European Ports to and via the United States of America and Canada and *vice versa* in vessels owned, leased, chartered or controlled by them without regard to the flag. Excepted are Italian and Oriental passengers forwarded by direct steamers through the Straits of Gibraltar. (Oriental passengers means passengers to or from Greece, Africa and Asia.)

## ARTICLE 2.

All passengers forwarded in any intermediate class between steerage and cabin, as defined in Article 13, to be considered as steerage passengers in the sense and meaning of this Contract.

*Commentary to Article 2*

120 (a) The word "Cabin" in the sense of this Contract is understood to mean the first and second cabin.

(b) Intermediate or even cabin passengers are steeragers unless they pay at least the lowest cabin-fare as defined in Article 13.

(c) Steeragers once embarked by a Line cannot be counted a second time by the same Line or any other Line in case of transfers through accidents, etc.

## ARTICLE 3.

The proportions in which the Lines participate in the total transportation of steeragers in accordance with Article 1 of this contract are fixed as follows (subject to the figures being checked) :—

*Westbound.*

	%	
1. The Allan Line Steamship Co. Ltd., Glasgow, for its United States services	0.62	122
2. The Anchor Line (Henderson Bros. Ltd.), Liverpool,	3.40	
3. The Cunard Steamship Co., Limited, Liverpool,	13.75	
4. Hamburg-Amerikanische Packet-fahrt Actien-Gesellschaft, Hamburg,	19.61	
5. The Nederlandsch Amerikaanshe Stoomvaart Maatschappij, Rotterdam,	6.63	
6. Norddeutscher Lloyd, Bremen,	26.53	
7. Societe Anonyme de Navigation Belge Americaine (Red Star Line), Antwerp,	9.71	
8. I. M. M. Co., White Star Line,	8.60	
" American Line,	6.68	123
" Dominion Line,	4.47	
	<hr/>	
	100.00	

*Eastbound.*

1. The Allan Line Steamship Co. Ltd., Glasgow. For its United States services. For its Canadian services (including Portland in the Winter).	4.95
2. The Anchor Line (Henderson Bros. Ltd.) Liverpool,	3.93

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	3. The Cunard Steamship Co., Limited, Liverpool, for its Liverpool services,	12.77
	The Cunard Steamship Co., Limited, Liverpool, for its Fiume Triest service as per Page 28,	2.35
125	4. Hamburg-Amerikanische Packet-fahrt Actien-Gesellschaft, Hamburg,	12.35
	5. The Nederlandsch Amerikaansche Stoom- vaart Maatschappij, Rotterdam,	6.10
	6. Norddeutscher Lloyd, Bremen,	18.79
	7. Societe Anonyme de Navigation Belge Americaine (Red Star Line), Ant- werp,	8.56
	8. I. M. M. Co., White Star Line,	15.49
	“ American Line,	8.72
	“ Dominion Line,	1.50
	9. Canadian Pacific Ry. Co. (Atlantic Steamship Lines),	4.49

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 100.00

126 The Cunard S. S. Co.'s Adriatic service, the Allan Line's Canadian services, and the Canadian Pacific Ry Co., Atlantic S. S. Lines, are not covered by this contract as far as westbound business is concerned, except for the conditions attached to the Cunard S. S. Co.'s Adriatic service as provided for on page 33.

## ARTICLE 4.

If a Line ceases to carry steeragers in the sense of Article 1, its share of participation as fixed in Article 3 will be divided amongst the other Lines in proportion to the percental participation appertaining to each Line, according to Article 3.

## Commentary to Article 4

(a) In case a Line ceases to exist or ceases to forward steeragers, the deposit made by such Line as stipulated in Article 17 will be returned to it after the expiration of 6 months but only if and in so far as no claim lays against the deposit under this contract.

(b) If a Line transfers its business in part or in whole to a successor or if an amalgamation with another Line takes place, the Line so transferring business is bound to make it binding upon its successor to enter into this contract and to become a party to it with all the rights and obligations arising out of this contract, and the deposit made by the former Line, forthwith devolves upon the other Line, and stands valid on behalf of the latter. 128

## ARTICLE 5.

(a) If any of the Lines are compelled by vis major to discontinue their entire service or even only their steorage service for longer than 4 weeks after its last sailing (the day of this sailing included), such Line ceases to be a party to this contract from the date of its last sailing, but becomes a party to it again immediately upon the resumption of its service or even only of its steorage service. 129

(b) In the interval, the participation-quota of such Line devolves *pro rata* of the participation as per Article 3 upon the other Lines.

(c) In case Lines representing 40 per cent of the shares are compelled contemporaneously to discontinue their steorage services for longer than four weeks from their last sailing, the present contract to

be suspended so long as such discontinuance of the service or services lasts, beginning from the last sailing.

*Commentary to Article 5*

(a) It was not considered feasible to closely define the conception of "vis major" inasmuch as the opinion generally prevailed that it would be impossible to exhaust all the eventualities which might in this respect arise.

- 131 (b) But it was unanimously thought that not only the blockade of ports, war and similar events of a political or revolutionary kind should be comprised in the conception of vis major, but that also obstruction of ports by ice or from other causes, as for instance; if a narrow fairway should be completely closed up by a sunken vessel in or outside of a port, shall be considered as vis major. A cessation of a Canadian service during the Winter season when the St. Lawrence is closed shall not be considered as coming under this clause.

- 132 (c) A Line ceasing to be a party means, that the accounts are closed with it up to the day when the Line had its last sailing, and a Line becomes a party again, means that the accounts are re-opened with it from the day of its rejoining the contract, that is, from the day of its first sailing.

ARTICLE 6.

(a) Any Line or Lines whose steerage transportation in a year exceeds in point of number the proportions fixed by Articles 3 to 4 have to pay a compensation price of £4 for each passenger (soul) carried in excess of the established proportion.

(b) Such money to be paid to the Line or Lines who have not reached their participation-quota and such payments to be made in proportion to the number of steeragers which each Line is short.

*Commentary to Article 6*

(a) The stipulation of a compensation payment for each steerager carried beyond the proportion allotted by this Contract forms one of the main features of the entire Contract. The payment of such compensation is certainly not the intent and purpose of the Contract, but it is the requisite means to deter the Lines from following the tendency to exceed their proportion.

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(b) The possibility ought not to be excluded to effect alterations with regard to the figure £4 in the event of it becoming evident that from extraordinary causes, the stipulated compensation proves to be too low or too high for the purposes of this contract.

(c) If for instance the steerage rates by any Line should fall below £4, the compensation price of £4 was considered excessive for the purpose of this contract.

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(d) It was therefore agreed that the compensation can be advanced and lowered by a majority of the Lines representing at least 75 per cent of the shares as fixed in Article 3.

(e) It was, however, understood that alterations of the compensation price can in no case be decided otherwise than to take effect at the beginning of the next week.

## ARTICLE 7.

The Compensation price fixed by Article 6, as also the statistics relating to the transportation of steer-agers, is in all cases based upon the number of persons or souls, so that children and infants always count as full passengers in the sense of this present contract.

*Commentary to Article 7*

- 137 The stipulation contained in this Article was deemed necessary in view of the fact that if for children and infants certain fractions of the rate for adults were to be reckoned, the accounts would be unduly complicated.

## ARTICLE 8.

- (a) Provisional compensation accounts to be prepared monthly by the Secretary who has to direct the party or parties in excess of their share with regard to the amount of compensation to be paid by them. Such payments have to be effected within a fortnight after receipt of the Secretary's notice.
- 138 (b) Final settlements will be made at the end of each calendar year on the basis of a compensation account prepared by the Secretary comprising the entire year. Objections against this final account to be made within four weeks, failing which, the accounts shall stand.
- (c) Objections to the correctness of the accounts form no release from the obligation to effect the provisional settlement.

*Commentary to Article 8*

No comment needed.



## ARTICLE 9.

Each Line undertakes to arrange its services in such a manner that the number of steeragers which it actually carries corresponds as nearly as possible with the number allotted to it by this contract.

*Commentary to Article 9*

As already explained in the comment to Article 6, the payment of the compensation moneys is not the object of this Contract, but merely the means of deterring the Lines from endeavoring to exceed their participation-quota. 140

## ARTICLE 10.

(a) For the purposes of the compilation of the compensation accounts, all the Lines have to furnish to the Secretary every 7th, 15th, 23rd, and last day of a month, their statistics of the steeragers and also 2nd Cabin Passengers carried by them in the week ending with these respective dates, and the destination of the steamers.

(b) A fine of £5 shall be imposed upon any Line delaying the delivery of the statistics for more than three days. 141

(c) The Secretary has to furnish to the Lines, weekly, the statistics of the passengers carried, and monthly, a statement showing the position of the Lines *versus* each other, and not later than on the 15th of each month for the preceeding month.

*Commentary to Article 10*

No comment needed.

## ARTICLE 11.

(a) In case the results thus obtained show that any of the Lines have exceeded their proportion or have remained below it, such Line is entitled and in duty bound to adopt measures calculated to bring about a correct adjustment. But before putting such measures into operation, the Line is bound to inform the Secretary of the measures proposed to be adopted.

- 143 (b) The other Lines are entitled to await what result the measures taken produce, or in so far they represent 75 per cent of the shares they may direct other or more forcible measures, which can only refer to rates to be set in motion. In the latter case, the Lines are bound to put such measures into force without delay and without demur.

*Commentary to Article 11*

- (a) All parties were unanimously of the opinion that the adjustment is, whenever practicable, to be effected not by reducing the rates of one Line, but on the contrary, by raising the rates of one or several of the Lines.

- 144 (b) No Line to be compelled to fix its gross rate per adult steerager at less than £5 or more than £8.

(c) It was expressly understood that there is to be no appeal against the decisions taken by such majority of 75 per cent, as such decisions will in all cases be solely in respect to questions of rate.

(d) Even in case the Lines themselves do not propose the adoption of measures, a majority of the Lines representing 75 per cent of the shares can immediately proceed to take measures, as for instance;

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they may direct that the rates shall be raised or reduced.

(e) In all cases under this contract where percentages have to be taken into consideration, it is understood that in questions on westbound business, the westbound percentages, in questions on eastbound business the eastbound percentages, and in general, questions the mean of the west—and eastbound percentages of each Line shall apply.

## ARTICLE 12.

146

No Line has the right to alter its steerage and second cabin rates without having previously informed the Secretary.

*Commentary to Article 12*

No comment needed.

## ARTICLE 13.

(a) Unless there is a second-class rate agreement, the lowest second cabin rates of any Line westbound must be at least £2, and eastbound at least \$10, higher than the highest normal third-class rates of the respective steamer. In case a Continental Line should carry third-class and steerage passengers, the basis for fixing its second-class rate shall be its steerage rate.

147

(b) The lowest prepaid cabin rate in America of any of the Lines must be at least equal to the lowest cabin rate of the same Line on this side.

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*Commentary to Article 13*

(a) The word cabin is also here, as in Article 2, understood to comprise both the first cabin and the second cabin.

(b) If a Line has fixed and published its second cabin tariff, it cannot be compelled to change this tariff during the current season whatever changes in the steerage rates may occur. Each Line shall indicate to the Secretary when its seasons commence and end, and also indicate the rates.

149

(c) The rate of exchange with regard to cabin rates is fixed for dollars at marks 4 or 4 shillings.

## ARTICLE 14.

(a) The Lines undertake to pay out of the gross steerage rate, a commission to their agents which must not exceed in Great Britain 6/- per adult to ordinary agents, or 9/- to general agents, or on the Continent not more than 15/- for a full steerager, or 12 kroners in Scandinavia or 17 Finnish marks in Finland.

150

(b) The maximum commission for second cabin passengers per adult in Great Britain to be not more than 5 per cent with a minimum of 9/- to ordinary agents or 13/6 to general agents and on the Continent a maximum of 6%, but each Line is entitled to grant a minimum of 15 marks on a single trip per adult.

*Commentary to Article 14.*

In respect to the question as to who is to be considered as agent of a Line and more especially also

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whether the so-called town agents are comprised in the term of agent, it was unanimously decided, that as agents in the sense and meaning of the contract, only such agents are to be considered who are regularly appointed by a Line. In the case of the British Lines, any agent appointed by their head agents at the ports shall be considered as a firmly engaged agent of a Line.

## ARTICLE 15.

The Cash Steerage Rates and the American Pre-  
paid Rates shall be established on the following  
equivalence 152

M 100 .....	Dollars 24 1/2
" 110 .....	" 27
" 120 .....	" 29 1/2
" 130 .....	" 31 1/2
" 140 .....	" 34
" 150 .....	" 36 1/2
" 160 .....	" 38 1/2
" 170 .....	" 41
" 180 .....	" 43 1/2
" 190 .....	" 45 1/2
" 200 .....	" 48

153

*Commentary to Article 15.*

(a) It was not thought necessary to make any stipulation in respect to the rate of commission to be paid to agents in America for prepaids, so long as the rates of commission on the other side are fixed by the Continental Conference and/or the North-Atlantic Conference, but it is agreed that in no case, the sub-agents' commission shall exceed 2 Dollars or the head agents' commission 3 Dollars, and the names of such head agents shall be scheduled with the Secre-

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tary of the Continental Conference and/or North-Atlantic Conference in New York and with the Secretary of the Atlantic Conference.

(b) It was agreed that with a view to regulate the question in respect to the European inland transportation in connection with the prepaid business, each Line may issue a Tariff containing not more than 300 stations, showing the cost of transportation from such stations to the port of embarkation. No commission shall be allowed on these European inland rates.

155

## ARTICLE 16.

(a) The Lines undertake to comply with Article 8 of the "General Rules, third series, of the Continental Conference" which reads as follows:

"No circulars or publications shall be issued by any Line reflecting upon or instituting comparisons with any Conference Line unfavorable to the latter, and no party hereto shall support any newspaper which may systematically attack any Conference Line."

156

(b) They further undertake to send to the Secretary any printed matter and circulars sent to agents in relation to the steerage business, so far as such matters are not of purely internal nature.

*Commentary to Article 16.*

(a) In view of the fact that the stipulations referred to in this Article of the Continental Conference have stood the test of many years practical working, it was decided not to alter anything with regard to such stipulations of the Continental Conference, but it was agreed that the words "support any newspaper" are more especially understood to mean

that no advertisements are to be given to such newspaper.

(b) It was furthermore decided that all the Lines shall be responsible for their agents and employees or other representatives in this sense, that the Lines are bound not only immediately to dismiss an agent, etc., who in respect to another Line has disregarded the stipulations of Article 16, but that all the Lines are also bound to break off all and every direct or indirect business connection with such agent.

(c) An agent, etc., who has thus been dismissed, must not be engaged by any of the other Lines nor are they allowed to have any business connection directly or indirectly with such person.

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#### ARTICLE 17.

For the faithful performance of the conditions of this agreement, the parties deposit with the Secretary a promissory note in the amount of £1,000 for each per cent proportion.

This note is only payable if it is accompanied by the award of an arbitrator, provided for in this agreement, or by the award of another arbitrator, agreed upon by the parties at difference.

159

#### *Commentary to Article 17.*

No comment needed.

#### ARTICLE 18.

(a) The sum deposited shall be considered the amount of liquidated damages and thus entirely forfeited, if the Line who made the deposit unduly withdraws from the present contract before its expiration,

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or if the Line resorts to actions which render the continuance of this present contract impossible, and which are, therefore, to be considered equivalent to a withdrawal from this present contract, as for instance:

(b) Refusal to pay compensation money or failure to replenish the deposit in due time, or assisting directly or indirectly a new opposition Line, or starting or assisting a Line whereby the business as defined in Article 1 would be seriously interfered with.

161

*Commentary to Article 18.*

No comment needed.

## ARTICLE 19.

In the event of a deposit being declared entirely forfeited the Line or Lines who have claims to compensation will in the first instance receive satisfaction out of the same *pro rata* of their claims. Any remaining surplus will be divided amongst all Lines excluding the Line the deposit of which has been declared forfeited proportionate to their participation-quota.

162

*Commentary to Article 19.*

No comment needed.

## ARTICLE 20.

(a) Penalties in case of contravention against or infraction of any stipulations of this contract shall be fixed by the Arbitrator, but in no case shall such penalties exceed the amount deposited by the party at fault.



(b) The amount of penalty to be in each case, not less than £250 for each contravention or infraction, except as provided for in Article 10.

(c) In case of the contravention or infraction being made wilfully and designedly, especially in case of any wilful and intentionally incorrect statement or declaration in respect to statistics, the penalty shall not be less than £2,500.

(d) The sums accruing from penalties are to be divided amongst the other Lines in the same manner as provided for at the end of Article 19.

164

(e) Unless the penalty be paid to the Secretary within 8 days after the Line concerned has received the relative award, the deposit will be drawn upon up to the amount of such penalty.

*Commentary to Article 20.*

It was thought that a penalty of £2,500 for each case might in case of systematically incorrect statements amount to such an extravagant sum that it would be impossible to recover it, or that the deposit would be entirely exhausted thereby; hence this stipulation, that in such case the penalty need not be applied to each case separately, but is fixed at £2,500 minimum, which implies that a higher amount can be fixed according to the gravity of the infraction, the number of cases involved, as well as the length of time during which the infractions and contraventions have been practiced.

165

ARTICLE 21.

In the event of a deposit having been dealt with the same must within 14 days after the day on which it

*Petition*

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has been so dealt with be replenished up to its original amount.

*Commentary to Article 21.*

167

The replenishment of the deposit shall be effected by the Lines without their having been called upon to effect such replenishment.—The notes required to replenish the deposit are to be transmitted to the Secretary in the same manner as stipulated in Article 17. The Secretary is bound forthwith to arrange for the notes so received being immediately deposited with a bank. As stipulated in Article 18, the remainder is entirely forfeited if the deposit is not replenished in due time.

## ARTICLE 22.

(a) Other Lines can be admitted to the present Contract, and the terms and conditions of the latter can be altered and new terms and conditions can be added thereto, but only by the unanimous vote of the Lines unless otherwise provided for in this Contract.

168

(b) All alterations and additions made in respect of this present Contract, to be valid and binding upon the Lines, parties to this present Contract only when all the Lines have given their written consent to such alterations and additions.

*Commentary to Article 22.*

No comment needed.

## ARTICLE 23.

(a) The execution and control of the fulfilment of the stipulations of the present contract are confided firstly to the Secretary, secondly to the Arbitrator.

(b) The Secretary must be a person entirely and in every respect independent of any of the parties to this present contract. The Secretary shall be appointed or dismissed by a majority of the Lines representing 75 per cent of the shares. Mr. H. Peters at Jena is hereby appointed as Secretary.

(c) Amongst his duties are: To receive the statistical statements, to examine the same as also the accounts, for which purpose the Secretary shall have access to the Passenger Offices of the Lines and can there examine all books, correspondence, &c., so far as he may deem it practicable; to communicate the statistics and accounts to all the Lines concerned, and act as mediator in general in the transactions between the Lines themselves, so far as such transactions appertain to matters relative to this Contract; wherefore, the Secretary has also to see that all Lines receive regularly and simultaneously all necessary information; to control the steerage prices in accordance with Article 11; to collect the payment of the penalties; to call the Meetings of the Lines according to Article 25 and keep the minutes of these Meetings; to effect the Compensation Accounts.

(d) It shall be the duty of the Secretary to use every exertion to settle difficulties amicably.

(e) The expenses of the Secretary are to be paid by the Lines in proportion to the mean of the percentages allotted to each according to Article 3, but the salary of the Secretary shall be paid by the Lines in equal parts.

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(f) There is no objection to the British Lines sending their statements and reports through the Secretary of the North Atlantic Passenger Conference in Liverpool.

## ARTICLE 24.

All parties mutually agree that any dispute or claims between any of them, or between any one or more of them, and the rest of them arising under this agreement, shall be settled by Arbitration as follows:

173

(a) Arbitration proceedings, unless the parties in dispute agree otherwise, shall take place alternately in England and Germany; to commence with England.

174

(b) Notice in writing of intention to prefer a claim shall be given in reasonable time, to the party complained of, signed by or on behalf of the complaining party, and stating the nature and also particulars of the claim. Such notice shall as to any party hereto be deemed properly served if sent by post prepaid in a registered letter, duly addressed to the principal office in England of such British or American Line, and to the principal office on the Continent of such Continental Line, and shall be deemed to have been delivered in the ordinary course of post. Copies to be sent to the Secretary, who has to inform the other parties.

(c) Unless the disputing parties mutually agree to the appointment of a single Arbitrator within 14 days from the date of the aforesaid notice, each party shall without delay, appoint in writing an Arbitrator to act on his

behalf, and the two Arbitrators so chosen shall appoint an Umpire. In case they cannot agree upon the Umpire, the latter to be nominated by the President of the Board of Trade if the arbitration takes place in England, and by the President of the Hanseatic court of appeal in case the arbitration takes place in Germany.

(d) Should either of the parties fail to appoint an Arbitrator within 21 days after notice of the intended reference has been given, and for seven days after service upon him or them of notice in writing by the other disputing party or parties appointing his or their Arbitrator then the one Arbitrator who has been chosen may if so required by the party or parties who appointed him proceed to act as sole Arbitrator in the reference whether the party failing to appoint an Arbitrator appear before him or not, and the decision of such sole Arbitrator shall be final and binding. 176

(e) The arbitrator or arbitrators shall alone have power to determine whether any claim preferred comes within the terms of this agreement, and also as to which of the parties shall pay the costs of the reference. 177

(f) The arbitrator or arbitrators shall take into consideration whether from the circumstances disclosed it appears that proved breaches are isolated offences, or whether they are incidents in a systematic violation of this agreement, and shall impose damages accordingly.

(g) The damages for breach of this agreement shall be imposed by the arbitrator having due regard to the stipulations in Article 20.

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(h) Damages shall be payable within eight days from the date of the notification of the award.

179

(i) Each party hereto agrees that the amount of any fines or damages to be imposed upon him or them by the Arbitrator or Arbitrators as above provided shall be treated as the liquidated and ascertained damage for the breach of this Agreement complained of and not in the nature of penalty or under any circumstances be regarded otherwise than as the true and ascertained damages resulting from the breach, and each party hereby irrevocably declares himself finally stopped from raising any contrary contention.

180

(k) The Arbitrator or Arbitrators shall notwithstanding they may have made and published an award have power to re-open and reconsider the same and to hear further evidence and to make a fresh award provided cause be shown satisfactory to him or them within one week after the award is first made and published, or if the Arbitrator or Arbitrators see cause to extend the time, then within three weeks of the issue and publication of the said award. The award of the Arbitrator takes the place and is equivalent to a legal judgment given by the highest instance of any law court against which all right of appealing is exhausted, and it is expressly understood that all the parties to this present contract relinquish all and every right to employ against the award given any legal means of whatever name or description such legal means may be.

(l) Any disputes arising under this Agreement shall be settled according to the law of

the country in which the arbitration takes place, wherever the domicile residence or office of business of the parties to this Agreement may be or become.

(m) In case of arbitration taking place in England, all and singular, the provisions of the Arbitration Act 1889, or any statutory modification or amendment thereof for the time being in force, shall be applicable.

(n) In case of arbitration taking place in Germany, the German law will apply, but the manner in which the arbitrator thinks proper to take the evidence of the parties and of the witnesses who may have to be heard, as also the modus which he adopts in ascertaining the facts of the matter at issue are left entirely to his conscientious decision, and it is expressly understood that he is not bound to the observance of the rules in operation in respect of any legal procedure.

182

*Commentary to Article 24.*

No comment needed.

183

ARTICLE 25.

(a) Meetings are convened by the Secretary. Such meetings to be held alternately at London and at Cologne, to commence in Cologne.

(b) Regular meetings shall be held on the first Thursday of March and December.

(c) Special meetings shall take place within 21 days if the majority of the Lines demand same, within four weeks if demanded by two of the Lines and within five weeks if demanded by only one Line.

(d) The subject or subjects to be dealt with in such meetings to be notified by the Secretary to all the parties concerned not less than eleven days before the date on which the meeting is to take place.

(e) At meetings thus convened the party or the parties present shall form a quorum irrespective of the number.

(f) Resolutions cannot be taken upon any subjects which have not been duly notified to all the parties concerned, unless all the parties to this contract are represented at such meetings and agree.

185

(g) Resolutions on subjects transmitted by the Secretary to the Lines can also be taken by a vote given in writing provided no Line objects to such manner of voting.

(h) Minutes shall be written at all meetings, the same to be signed at such meetings by all the parties present, and minutes so written and signed shall stand as a true record of the proceedings and shall be considered final.

*Commentary to Article 25.*

186

Each Line demanding a meeting in doing so has to communicate to the Secretary the subjects which the Line proposes for discussion. Each Line can propose additions to these subjects provided such additions are forwarded to the Secretary so as to be in his possession at least five days before the meetings.

ARTICLE 26.

(a) It is understood that in all cases in which resolutions have to be taken in respect to existing differ-



ences of opinion as to the terms and conditions of this present contract, as also in the case of all decisions by the Lines or by the Arbitrator not only the tenor but also more especially the spirit of this present contract, is to be taken into consideration.

(b) For this purpose there have been appended to the various articles commentaries with expositions, and it is understood that same are to be considered to their full extent to form an integrant part of this present contract.

## ARTICLE 27.

188

(a) This present contract has been concluded for the period from March 1st, 1908, to February 28th, 1911, and shall after this latter date continue from year to year unless due notice be given to the Secretary not later than on the 1st December of the intention of terminating same at the end of the next February, namely, in the first instance on the 1st December, 1910.

(b) The withdrawal of any Line from the present contract releases the other Lines from all obligations except from the obligation to pay the Compensation accounts incurred under this contract up to the date of such withdrawal, unless the latter agree amongst themselves to continue the present contract under the same or under altered terms and conditions.

189

*Commentary to Article 27.*

No comment needed.

## ARTICLE 28.

In these presents unless there be something in the subject or contents inconsistent therewith:

*Petition*

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"Year" means a calendar year;

"Weeks" means the period for the 1st-7th, 8th-15th, 16th-23rd, 24th to the last day of the month;

"In writing" means by telegraph, by writing or by printwork;

"Lines" means Parties to this Contract;

"Notifications and communications" means in writing, never verbally; notifications and communications count from the day they have been dispatched;

"Vote" means open, not secret.

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*Commentary to Article 28.*

No comment needed.

LONDON, February 5th, 1908.

Hamburg-Amerika Linie (signed) Ballin.  
 Norddeutscher Lloyd " Heineken.  
 For the I. M. M. Co., and  
 other than the Red Star  
 Line (Signed) J. Bruce Ismay.

192

Subject to the reservation that if the Canadian Pacific Railway S. S. Lines do not accept the percentage proposed for them, *i. e.*, the basis of 1906 and 1907 combined, for the eastbound pool, nothing in this agreement shall be binding on the Allan Line S. S. Co.

For the Allan Line S. S.  
 Co. Ltd. (Signed) Henry Allan.  
 For the Cunard S. S. Co. " William Watson.  
 For the Anchor Line  
 (Henderson Bros.) Ltd.  
 (signed) Richard Henderson.  
 For Holland-America Line (Signed) Reuchlin.  
 Red Star Line (Signed) Ed. Strasser.

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The Canadian Pacific Railway agree to become a party to the above contract as far as eastbound business is concerned and to accept 4.60% as their share of the total eastbound traffic as per Article 1, inclusive their own carryings but exclusive Cunard Line's Fiume service. If Cunard Line's Fiume service is included and if shared by all lines the Canadian Pacific Railway share of 4.49% will be accepted.

The Canadian Pacific Ry.

Co. (Signed) Allan Cameron.  
(Atlantic Steamship Lines)

## EASTBOUND:

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The Continental Lines propose that the Cunard Line, Fiume-Triest service, joins the Atlantic Conference for all non-Italian passengers on basis of their average carryings 1906 and 1907.

(LONDON, 5th February 1908)

For the Cunard S. S. Co.

Ltd.	(signed) William Watson	
Hamburg American Line	(signed) Ad. Storm	
Holland America Line	(signed) Reuchlin	
Norddeutscher Lloyd	" V. Helmolt	
Red Star Line	" Ed. Strasser	195
Cie. Genl. Transatlantique	" Ch. Tattet	

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and averments in this answer set forth, so far as the same relate to matters alleged to have taken place abroad or with which he had no personal connection; but he says that all of the admissions, denials and averments in this answer set forth are true to the best of his knowledge, information and belief. And the corporate defendant herein, in making its denials, admissions and averments, except in so far as they refer particularly to the individual defendant William Coverly, intends the same to refer only to its own acts and transactions.

## I.

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## DENIAL OF COMBINATION AND CONSPIRACY

1. These defendants admit that the corporate defendants herein are engaged, but deny that the individual defendants are engaged, in foreign trade and commerce as common carriers of freight and passengers, including third-class or steerage passengers, between ports in the United States and ports in Europe, except that they say, upon information and belief, that the defendant, Canadian Pacific Railway Company, is not so engaged, and they deny that the corporate defendants are engaged as common carriers of passengers and freight between inland points in the United States and ports or inland points in Europe, Asia or Africa, and they deny that in respect to the business alleged in Article I of the petition they are violating the provisions of the Act of Congress passed July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies" and the acts amendatory thereof and supplemental thereto; and they deny, upon information and belief, that any of their co-defendants are so engaged, and they deny that at any time they have been, or are now,

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engaged in any combination or conspiracy in violation of said acts.

## II.

AS TO THE DESCRIPTION OF THE DEFENDANTS AND THE TRADE AND COMMERCE WHICH THEY CONDUCT

2. They admit the allegations contained in the paragraphs of Article II of the petition numbered 7 and 8.

203 3. They deny each and every allegation contained in the paragraph of Article II of the petition numbered 24, except that they admit that some of the defendant steamship lines are in some respects natural competitors.

4. As to the allegations of the remaining paragraphs of Article II of the petition they are not sufficiently informed to make answer thereto and, therefore, leave the petitioner to make such proof in relation thereto as it may be advised.

## III.

204 AS TO THE DESCRIPTION OF THE TRADE AND COMMERCE WHICH THE DEFENDANTS ARE CHARGED WITH MONOPOLIZING AND ATTEMPTING AND CONSPIRING TO MONOPOLIZE

5. They deny that immigration from Europe to the United States has steadily increased, and say that it reached its maximum in the year 1907, and that last year it was less than in any year for ten years prior thereto. They admit that the traffic back and forth is large, but they deny that it is very lucrative. The other allegations of Article III of the petition they deny except that they admit that the steamship com-

panies have been extending their facilities for handling such traffic, as well as their other business, and that the income from third class or steerage traffic between Europe and North America forms an important part of the revenue of the steamship companies.

## IV.

## DENIAL OF COMBINATION AND CONSPIRACY

6. They deny that these defendants, and, upon information and belief, deny that any of the defendants, have been or now are engaged in the United States or elsewhere in any combination or conspiracy to restrain or monopolize any part of the trade or commerce of the United States with foreign nations, or to destroy, eliminate, or suppress competition either between themselves or by others in the business of transporting third-class or steerage passengers between ports in the United States and ports in Europe, or have sought to accomplish any such combination or conspiracy or any objects thereof either in the manner or by the means alleged in the petition, or otherwise.

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## V.

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## DENIAL OF UNLAWFUL COMBINATION AND CONSPIRACY CHARGED AND OF ALLEGED MANNER AND MEANS OF ACCOMPLISHING SAME

## A

*As to agreement of February 5, 1908*

7. They admit that on or about February 5, 1908, at London, England, the defendants mentioned in

paragraph 1 of subdivision A of Article V of the petition entered into a contract, of which they believe Exhibit A annexed to the petition is a substantially correct copy, but for greater certainty they pray leave to refer to the original upon the trial hereof. They deny, however, that said contract was or is unlawful and deny that by the execution thereof, or otherwise, said defendants entered into any unlawful combination or conspiracy, and they deny all the other allegations of said subdivision A not expressly admitted herein, except as the same may appear from the original contract of February 5, 1908. Further answering they say that said agreement was and is lawful under the laws of England, where the same was made, and under the laws of the countries of the parties thereto and of their vessels.

## B

*As to the Russian-American Line becoming a party to agreement*

8. They deny that pursuant to or in furtherance of any unlawful contract, combination or conspiracy the Russian-American Line was admitted to membership in the Atlantic Conference or to all the provisions of said contract of February 5, 1908. They admit that at about the time mentioned in subdivision B of Article V of the petition the Russian-American Line entered into an agreement with the other defendant steamship lines, parties to said contract of February 5, 1908, with reference to steerage or third-class passenger traffic, but for answer to the allegations of said subdivision B regarding the contents of said agreement or of said contract of February 5, 1908, they beg leave to refer to the originals thereof and ask that they be produced upon the trial hereof.



## C

*Denial of unlawful acts*

9. They say they are not informed as to whether, since the adoption of the contract of February 5, 1908, the business of all of the defendant steamship lines in the carriage of the steerage traffic referred to therein has been, or at the time of the filing of this petition was, carried on in all respects in accordance with the terms and provisions thereof or of resolutions adopted at meetings of the parties held in pursuance thereof, and, therefore, they leave the petitioner to make such proof thereof as it may be advised; but they deny that thereby or otherwise all free and natural competition between said steamship lines in the establishing of rates and furnishing of facilities for such steerage traffic has been wholly eliminated, and they allege that on the contrary at all times there has been and is now active competition between them. 212

10. They deny each and every allegation contained in the paragraph numbered 2 of subdivision C of Article V of the petition, and in particular they deny that they have entered into any unlawful agreement, combination or conspiracy, and they deny that any agreements into which they have entered necessarily involved the execution of their terms, scope and intent throughout the United States, or more particularly in the Southern District of New York; and they deny that since February 5, 1908, or at any other time, any of the individual defendants has been designated or established by his respective line at his respective office in the United States as agent for such line to carry out or make effective any unlawful agreement, combination or conspiracy whatsoever; and they deny that said individual defendants at their respective offices or agencies throughout the United States or in 213

*Answer of Anchor Line, et al.*

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the Southern District of New York, or at any other place or time, have been or are carrying out or executing any acts for the accomplishment of any unlawful combination, conspiracy or agreement whatsoever.

215

11. They deny that at any time whatever the individual defendants in the Southern District of New York or elsewhere have received orders or instructions from their respective principals with respect to the accomplishment of the objects and purposes of any unlawful combination or conspiracy whatsoever, or that any of said individual defendants have within said Southern District of New York or elsewhere complied with or carried out any such instructions.

DENIAL OF AGREEMENT TO DESTROY COMPETITION OF  
INDEPENDENT LINES

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12. They deny that in and for the execution of any unlawful combination or conspiracy or agreement, or in furtherance thereof, or otherwise, any or all of the defendant steamship lines, at a meeting held March 25, 1908, or at any other time, agreed that they should act together to eliminate and destroy the competition of any persons or corporations whatsoever, either in the business of carrying steerage passengers between Europe and the United States in competition with any or all of the defendant steamship lines or otherwise.

DENIAL OF ARRANGEMENT TO USE SO-CALLED "FIGHT-  
ING STEAMERS" TO DESTROY COMPETITION, AND  
THAT COMPETITORS ARE CRUSHED.

13. They deny that in and for the execution of any resolution as alleged or for the purpose of effecting the objects of any unlawful combination or conspiracy the defendant steamship lines appointed a committee

for the selection of so-called "fighting steamers," and they deny that the facts with reference to the appointment of a committee and its authority and powers, and as to the use and effect of said so-called "fighting steamers" are correctly or truly set forth in the petition, and they say that the facts in regard thereto are as follows, and not otherwise.

About March, 1908, lines known as the Russian Volunteer Fleet and the Russian-American Line, which were engaged in the transportation of steerage passengers between Libau and New York, and about April, 1909, the Uranium Steamship Company, under the name of the Northwest Transport Line and various other names, which was engaged in such transportation between Rotterdam and New York, adopted the plan of making such excessively low steerage rates that steerage passengers could not be carried therefor except at a loss. So long as said lines sought to secure such traffic only by fair and legitimate methods of competition the defendants did not reduce their rates in competition with said lines; but when said lines made such excessively low rates, and not until then, the defendants agreed that a committee of three in the United States should be authorized, whenever a vessel of said competing lines was booking passengers from New York at such low rates, to make a reduced rate for such one of the defendants' steamers sailing from New York at about the same time with the competing vessel as the committee might name; and it was also agreed that, in case the bookings for the steamer so named by the committee should exceed the capacity of such steamer, other steamers of the defendants sailing at about the same time should carry the excess and that the loss due to the difference between the reduced rate and the regular rates of the steamers carrying such excess passengers should be shared by the defendants. Said agreement was there-

*Answer of Anchor Line, et al.*

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after put into effect, but no steamer of the defendants was at any time despatched or its time of sailing or destination changed with reference to the sailings of the competing vessels, and the reduced rates made for defendants' vessels were at no time lower than the rates which, as these defendants are informed and believe, were made by such competing vessels.

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The sole intent and purpose of said agreement and action on the part of defendants was to restrict, so far as possible, the loss resulting from such excessively low rates of competing vessels, and was not in or for the execution or furtherance of or to effect the objects of any unlawful combination or conspiracy or to eliminate or destroy competition on the part of said lines, or to force them out of business, or for any other unlawful, improper or unfair purpose. To have reduced the steorage rates on all of the defendants' steamers would have resulted in enormous loss and the driving out of business of the weaker among them, and the method adopted was necessary and reasonable in order to protect the defendants against such unfair and unnatural competition.

DENIAL THAT THE RUSSIAN VOLUNTEER FLEET WAS  
DRIVEN OUT OF BUSINESS.

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14. They admit that from the month of March until the month of June, 1908, or thereabouts, the Russian Volunteer Fleet advertised steamers to sail from the port of New York to the port of Libau, in Russia, and advertised for and solicited persons to sail as third-class or steorage passengers upon such ships. They deny that said ships were thoroughly equipped for handling such traffic, but say, on the contrary, on information and belief, that such ships were small and poorly equipped for steorage transportation. They deny that the facts as to the competition of steamers

of the defendant lines with the ships of the Russian Volunteer Fleet are truly and correctly set forth in the petition, and say that the true facts with regard thereto are as stated in paragraph 13 of this answer; they deny that the Russian Volunteer Fleet incurred loss or was forced to retire from the third-class or steerage business between New York and Russia by reason of any unfair or unlawful competition on the part of the defendant steamship lines; but they admit that in or about the month of July 1908, said fleet withdrew its steamships from the New York-Libau service and has ever since ceased to operate said line between said ports.

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And they say that the reason for the withdrawal of said Russian Volunteer Fleet from said business was not because of any agreement or action of the defendants, but was solely because of the inferior character of its service and lack of sufficient funds and because of its action in carrying steerage passengers at such excessively low rates, and the defendants say that the retirement of the Russian Volunteer Fleet was not in fact any detriment or loss to the public or to persons wishing to travel third-class or steerage between New York and Russia.

**DENIAL THAT THE RUSSIAN-AMERICAN LINE WAS  
DRIVEN OUT OF COMPETITION AND FORCED INTO  
UNLAWFUL COMBINATION OR CONSPIRACY.**

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15. They admit that from the month of March until the month of September, 1908, or thereabouts, the defendant the Russian-American Line was engaged in operating a line of steamships from the port of New York to the port of Libau, Russia, and in carrying thereon third-class or steerage passengers, and they admit that in conducting said business it was in competition to a certain extent with certain of the other

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defendant steamship lines, and that during said period it advertised its steamers to sail from the port of New York and advertised for and solicited persons to travel upon its ships as third-class or steerage passengers; but they deny that the facts with reference to the use of so-called "fighing steamers" are truly or correctly set forth in the petition, and say that the true facts in regard thereto are as stated in paragraph 13 of this answer. They deny that the Russian-American Line incurred financial loss in the conduct of its third-class or steerage traffic as the result of any unfair or unlawful competition on the part of the defendants, but they say that any financial loss suffered by said Russian-American Line was due solely to its course in charging excessively low rates and was not due to any agreement or action on the part of the defendants, and they deny that it unlawfully or wrongfully sought admission to any unlawful combination or conspiracy in order to be permitted to continue in said business or otherwise; and they deny that the facts in reference to its admission into the Atlantic Conference are truly or correctly set forth in said petition, and they say that the true facts in regard thereto are alleged in paragraph 8 of this answer. And they say that said Russian-American Line, by greatly improving the character of its vessels and service and by abandoning the practice of carrying steerage passengers at such excessively low rates, have been able to continue and establish its service, as these defendants are informed, upon a successful basis.

DENIAL OF UNFAIR COMPETITION AGAINST THE  
URANIUM STEAMSHIP COMPANY.

16. They admit that about April 1, 1909, the Uranium Steamship Company, Limited, began to operate and has ever since operated a regular line of steamships under different names and styles between

the ports of New York and Rotterdam, and began to carry and has ever since carried third-class or steerage passengers between said ports, and that said company has competed to some extent with some of the defendant steamship lines in the carriage of third-class or steerage passengers, and that said company has not been a party to the contract of February 5, 1908; but they deny that the defendant steamship lines on or about April 1, 1909, or at any other time, in and for the execution of any unlawful combination or conspiracy, took any action with regard to the use of steamers in competition with the steamers of said company, and they allege that the true facts with relation to the use of so-called "fighting steamers" are truly set forth in paragraph 13 of this answer, and that the facts are as therein stated and not otherwise.

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They admit that in March, 1910, the committee of three in New York was disbanded and that since that time steamers employed to protect the defendant lines against unfair and unnatural competition have been selected and their rates fixed from time to time by the defendant lines in Europe, and that notices of such action are now sent by them to the individual defendants representing them in this country, and the rates fixed have been put in force by notices sent out by the individual defendants through the agents throughout the United States.

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They deny that by reason of any illegal or oppressive measures the Northwest Transport Line has at any time been prevented from obtaining a fair and reasonable share of said traffic or forced to carry said traffic at a financial loss, and they say that said Northwest Transport Line is still continuing in said steerage business and has a fair and reasonable share thereof, and if it has suffered loss in said business the sole reason therefor is the inferior character of its service and its excessively low rates, which have at all times been lower than any rates of the defendants.



They deny that in pursuance of any unlawful combination, conspiracy or agreement, or to prevent other persons or corporations from engaging in any traffic they have agreed that no one of them shall continue in its employ as agent for the sale of tickets over its line any person who shall act as agent for the sale of third-class or steerage tickets over any independent line in competition with the defendant lines. They deny that any such agreement or manner of employing agents is adopted as a part of any illegal or oppressive attack upon the Northwest Transport Line or any other steamship line; but they say that the defendant lines have agreed not to employ as agents persons who act as agents for steamship lines which have been engaged or are threatening to engage in unfair competition with the lines of the defendants, and they say that this is reasonable and necessary for the proper protection of themselves and their business and as a means to safeguard the interests of intending passengers against irresponsible steamship lines and their agents, and to prevent fraud and injury to such passengers.

#### DENIAL OF EXCESSIVE AND ARBITRARY RATES.

17. They deny that at any time and in pursuance of any combination, conspiracy or contract, or otherwise, they have arbitrarily fixed their rates for steerage transportation for the purpose as alleged in the petition, or otherwise, and they deny that in fixing their rates they have deprived or are depriving the public of any benefit whatsoever; and they say that on the contrary the public has had the benefit of exceedingly low rates and of superior facilities, and that such rates and such facilities are far more favorable to the public than would have resulted had the defendants not entered into the lawful and reasonable agreement with reference to the conduct of their business as hereinbefore set forth.



DENIAL OF PENAL ENFORCEMENT OF THE TERMS OF  
ANY UNLAWFUL CONTRACT.

18. They deny all the allegations of the petition with reference to penal enforcement of the terms of the contract between the defendants and all duress upon or between the parties to said contract as alleged in the petition, and for the terms of said contract they refer to the original thereof when the same shall be produced on the trial hereof.

VI.

DENIAL OF MONOPOLY.

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19. They deny that by any unlawful contract or unlawful practices the defendant steamship lines have obtained or attempted to obtain a virtual or other monopoly of the traffic of transporting steerage passengers in trade and commerce between the United States and foreign nations or of any part thereof. They are not informed as to the percentage of steerage passenger traffic between Europe and North America carried in ships belonging to the defendant steamship lines, and therefore leave the petitioner to make such proof thereof as it may be advised. They deny that such steerage passenger traffic or any portion thereof is regulated, limited or restrained by means of any unlawful contract whatsoever, and they say that they are not informed as to what percentage of the steerage passenger traffic is conducted in accordance with the terms of the contract of February 5, 1908, and therefore leave the petitioner to make such proof thereof as it may be advised.

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20. Further answering, these defendants say that the business of transporting passengers between European ports and ports in the United States is international in its character, and as such is not subject

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to regulation by the laws of any one nation but can be regulated only by international agreements or treaties.

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21. Further answering, these defendants say that in enacting the Act of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and the acts amendatory thereof and supplemental thereto, the Congress of the United States did not intend to, and did not thereby, make agreements entered into by persons or corporations engaged in the transportation of passengers between European ports and ports of the United States unlawful.

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22. Further answering, these defendants say that in so far as the business of transporting passengers from Europe to the United States is concerned, no part of said business is transacted within the United States, but said business is wholly transacted in foreign countries and on the high seas. The only part of said business performed in the United States is the landing of passengers at ports in the United States, which right has been granted by treaty between the United States and the several nations to whose flags said steamers belong; and as to the whole of said business of transporting passengers from European ports to ports in the United States the act of Congress aforesaid has not and cannot have any application, force or effect whatsoever.

23. In the absence of governmental regulation of ocean transportation between the United States and foreign nations, such as exists as to railroad transportation, agreements among persons engaged in such ocean transportation are essential. Without such regulation or agreements, the weaker lines would be driven out of business and only the strongest would

survive. The agreement into which the defendants have entered does not result in undue or unreasonable restraint of foreign commerce. Interpreted reasonably, it does not restrain trade and commerce with foreign nations, nor does it create, or attempt to create, a monopoly. The very nature of the business is such as to make it impossible that a monopoly should be created. Competition on the seas is necessarily limited only by the number of vessels in existence. Any ship owner may employ his vessels where he will. No franchise is needed; all are free to sail the seas; and, unlike any other business, those engaged in ocean transportation may at any time change from one trade to another. Steamers engaged in one trade may enter another temporarily, and, after demoralizing business and ruining those engaged therein, may return to their former routes. Thus, a great steamship company engaged in a worldwide business may, for a period short or long, but sufficient for its purpose, concentrate its forces and by unnatural and cut-throat competition drive out of business the weaker lines regularly established and engaged in the service. In this way it could destroy all of its weaker competitors.

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Agreements, therefore, among those engaged in the transatlantic trade, like the agreement of these defendants, are reasonable and necessary in order to make possible the continuance of the business. The agreement entered into by the defendants was not for the purpose of creating a monopoly, nor for the purpose of establishing and maintaining excessive and unreasonable rates, nor for the purpose of unlawfully destroying competition or restraining trade and commerce.

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The necessity for such an agreement is shown by the history of the transatlantic trade. At times when no such agreement has been effective, those engaged

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in the business have reduced rates in competition with each other to such a point that the continuance thereof would speedily have destroyed all but the strongest lines, and, in fact, such rate wars have been continued to such an extent that weaker lines have actually been forced out of business.

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The necessity for such an agreement has also been strikingly shown by the action of the Government with reference to the transportation of steerage passengers by the railroads of the United States. For many years the railroads have divided among themselves by agreement the transportation in the United States of steerage passengers arriving upon the lines of the defendants and others engaged in the transatlantic passenger business. The Interstate Commerce Commission, after a careful investigation of this practice of the railroads, concluded that, in the interest of the public, it should not be disturbed.

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The effect of the present agreement between the defendants has not been to cause higher rates, but instead has resulted in steerage passengers receiving far more for their money than formerly. Larger and faster steamers have been put in service with better accommodations for steerage passengers and more frequent sailings, and the facilities for comfort and safety have been greatly increased. All of this has been accomplished notwithstanding the increasingly stringent requirements of the laws of the United States and of the foreign countries from which the steamers sail. The requirements of the United States immigration laws alone have become, and are becoming year by year, more and more severe, and impose upon steamship owners greatly increased expenses. Notwithstanding all this, the charges made by the steamship companies for the service have been uniformly fair and reasonable and have not increased proportionately with the cost of the service. The present

rates for steorage transportation are not substantially higher than those of former years. Such rates have not kept pace with the increased burdens upon steamship owners, the improved facilities furnished and the generally higher cost of living. The result, therefore, of agreements among the steamship companies, such as the agreement of February 5, 1908, has been beneficial to the public, and, instead of restraining foreign trade and commerce, has been to protect and develop it.

24. And these defendants now, having fully answered the petition herein, deny all and all manner of unlawful contract, combination, conspiracy, monopolizing or attempt to monopolize, wherewith they are charged by said petition; without this that if there is any other matter, cause or thing in the petition contained material or necessary for these defendants to make answer to and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, the same is not true to the knowledge or belief of these defendants or to any of them; all of which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

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ANCHOR LINE (Henderson Brothers),  
LIMITED,

By William Coverly,  
Agent.

WILLIAM COVERLY.

BURLINGHAM, MONTGOMERY & BEECHER,  
Solicitors for said Defendants.

CHARLES C. BURLINGHAM,  
NORMAN B. BEECHER,  
EVERETT MASTEN,  
Of Counsel.

250 **Answer of Nederlandsch-Amerika-  
ansche Stoomvaart Maatschappij  
(Holland-America Line) and Ad-  
rian Gips.**

IN THE CIRCUIT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT  
OF NEW YORK.

<p>251</p>	<p>THE UNITED STATES OF AMERICA, Petitioner,  against  HAMBURG - AMERIKANSCH E PAC- KET-FAHRT-ACTIEN-GESELLSCH- AFT, and others,  Defendants.</p>	}	In Equity.
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To the Honorable the Judges of the Circuit Court of  
the United States for the Southern District of New  
York, sitting in equity:

The answer of the defendants Nederlandsch-Am-  
ericakaansche Stoomvaart Maatschappij (Holland-  
America Line) and Adrian Gips to the petition of the  
United States of America herein:

252 These defendants respectively, now and at all times  
hereafter saving to themselves all and all manner  
of benefit or advantage of exception, or otherwise,  
that can or may be had or taken to the many errors,  
uncertainties, and imperfections in said petition con-  
tained, for answer thereto or to so much thereof as  
these defendants are advised it is material or neces-  
sary for them to make answer to, severally answer-  
ing, allege:

The individual defendant Adrian Gips, who joins  
in this answer, for himself avers that he has not per-  
sonal knowledge with reference to many of the aver-

ments of the petition or of the admissions, denials and averments in this answer set forth, so far as the same relate to matters alleged to have taken place abroad or with which he had no personal connection; but he says that all of the admissions, denials and averments in this answer set forth are true to the best of his knowledge, information and belief. And the corporate defendant herein, in making its denials, admissions and averments, except in so far as they refer particularly to the individual defendant Adrian Gips, intends the same to refer only to its own acts and transactions.

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## I.

## - DENIAL OF COMBINATION AND CONSPIRACY.

1. These defendants admit that the corporate defendants herein are engaged, but deny that the individual defendants are engaged, in foreign trade and commerce as common carriers of freight and passengers, including third-class or steerage passengers, between ports in the United States and ports in Europe, except that they say, upon information and belief, that the defendant, Canadian Pacific Railway Company, is not so engaged, and they deny that the corporate defendants are engaged as common carriers of passengers and freight between inland points in the United States and ports or inland points in Europe, Asia or Africa, and they deny that in respect to the business alleged in Article I of the petition they are violating the provisions of the Act of Congress passed July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies" and the acts amendatory thereof and supplemental thereto; and they deny, upon information and belief, that any of their co-defendants are so engaged, and they deny that at any time they have been, or

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are now, engaged in any combination or conspiracy in violation of said acts.

## II.

AS TO THE DESCRIPTION OF THE DEFENDANTS AND THE TRADE AND COMMERCE WHICH THEY CONDUCT.

2. They admit the allegations contained in the paragraphs of Article II of the petition numbered 15 and 16.

257 3. They deny each and every allegation contained in the paragraph of Article II of the petition numbered 24, except that they admit that some of the defendant steamship lines are in some respects natural competitors.

4. As to the allegations of the remaining paragraphs of Article II of the petition they are not sufficiently informed to make answer thereto and, therefore, leave the petitioner to make such proof in relation thereto as it may be advised.

## III.

AS TO THE DESCRIPTION OF THE TRADE AND COMMERCE WHICH THE DEFENDANTS ARE CHARGED WITH MONOPOLIZING AND ATTEMPTING AND CONSPIRING TO MONOPOLIZE.

5. They deny that immigration from Europe to the United States has steadily increased, and say that it reached its maximum in the year 1907, and that last year it was less than in any year for ten years prior thereto. They admit that the traffic back and forth is large, but they deny that it is very lucrative. The other allegations of Article III of the petition they



deny except that they admit that the steamship companies have been extending their facilities for handling such traffic, as well as their other business, and that the income from third-class or steerage traffic between Europe and North America forms an important part of the revenue of the steamship companies.

## IV.

## DENIAL OF COMBINATION AND CONSPIRACY.

6. They deny that these defendants, and, upon information and belief, deny that any of the defendants, have been or now are engaged in the United States or elsewhere in any combination or conspiracy to restrain or monopolize any part of the trade or commerce of the United States with foreign nations, or to destroy, eliminate, or suppress competition either between themselves or by others in the business of transporting third-class or steerage passengers between ports in the United States and ports in Europe, or have sought to accomplish any such combination or conspiracy or any objects thereof either in the manner or by the means alleged in the petition, or otherwise.

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## V.

## DENIAL OF UNLAWFUL COMBINATION AND CONSPIRACY CHARGED AND OF ALLEGED MANNER AND MEANS OF ACCOMPLISHING SAME.

## A.

*As to agreement of February 5, 1908.*

7. They admit that on or about February 5, 1908, at London, England, the defendants mentioned in

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*Answer of Holland-America Line, et al.*

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paragraph 1 of Subdivision A of Article V of the petition entered into a contract, of which they believe Exhibit A annexed to the petition is a substantially correct copy, but for greater certainty they pray leave to refer to the original upon the trial hereof. They deny, however, that said contract was or is unlawful and deny that by the execution thereof, or otherwise, said defendants entered into any unlawful combination or conspiracy, and they deny all the other allegations of said Subdivision A not expressly admitted herein, except as the same may appear from the original contract of February 5, 1908. Further answering they say that said agreement was and is lawful under the laws of England, where the same was made, and under the laws of the countries of the parties thereto and of their vessels.

## B.

*As to the Russian-American Line becoming a party to agreement.*

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8. They deny that pursuant to or in furtherance of any unlawful contract, combination or conspiracy the Russian-American Line was admitted to membership in the Atlantic Conference or to all the provisions of said contract of February 5, 1908. They admit that at about the time mentioned in Subdivision B of Article V of the petition the Russian-American Line entered into an agreement with the other defendant steamship lines, parties to said contract of February 5, 1908, with reference to steerage or third-class passenger traffic, but for answer to the allegations of said Subdivision B regarding the contents of said agreement or of said contract of February 5, 1908, they beg leave to refer to the originals thereof and ask that they be produced upon the trial hereof.

## C.

*Denial of unlawful acts.*

9. They say they are not informed as to whether, since the adoption of the contract of February 5, 1908, the business of all of the defendant steamship lines in the carriage of the steerage traffic referred to therein has been, or at the time of the filing of this petition was, carried on in all respects in accordance with the terms and provisions thereof or of resolutions adopted at meetings of the parties held in pursuance thereof, and, therefore, they leave the petitioner to make such proof thereof as it may be advised; but they deny that thereby or otherwise all free and natural competition between said steamship lines in the establishing of rates and furnishing of facilities for such steerage traffic has been wholly eliminated, and they allege that on the contrary at all times there has been and is now active competition between them.

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10. They deny each and every allegation contained in the paragraph numbered 2 of Subdivision C of Article V of the petition, and in particular they deny that they have entered into any unlawful agreement, combination or conspiracy, and they deny that any agreements into which they have entered necessarily involved the execution of their terms, scope and intent throughout the United States, or more particularly in the Southern District of New York; and they deny that since February 5, 1908, or at any other time, any of the individual defendants has been designated or established by his respective line at his respective office in the United States as agent for such line to carry out or make effective any unlawful agreement, combination or conspiracy whatsoever; and they deny that said individual defendants at their respective offices or agencies throughout the United

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States or in the Southern District of New York, or at any other place or time, have been or are carrying out or executing any acts for the accomplishment of any unlawful combination, conspiracy or agreement whatsoever.

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11. They deny that at any time whatever the individual defendants in the Southern District of New York or elsewhere have received orders or instructions from their respective principals with respect to the accomplishment of the objects and purposes of any unlawful combination or conspiracy whatsoever, or that any of said individual defendants have within said Southern District of New York or elsewhere complied with or carried out any such instructions.

**DENIAL OF AGREEMENT TO DESTROY COMPETITION  
OF INDEPENDENT LINES.**

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12 They deny that in and for the execution of any unlawful combination or conspiracy or agreement, or in furtherance thereof, or otherwise, any or all of the defendant steamship lines, at a meeting held March 25, 1908, or at any other time, agreed that they should act together to eliminate and destroy the competition of any persons or corporations whatsoever, either in the business of carrying steerage passengers between Europe and the United States in competition with any or all of the defendant steamship lines or otherwise.

**DENIAL OF ARRANGEMENT TO USE SO-CALLED "FIGHT-  
ING STEAMERS" TO DESTROY COMPETITION, AND  
THAT COMPETITORS ARE CRUSHED.**

13. They deny that in and for the execution of any resolution as alleged or for the purpose of effecting the objects of any unlawful combination or conspiracy the defendant steamship lines appointed a committee for the selection of so-called "fighting steamers," and they deny that the facts with reference to the appoint-

ment of a committee and its authority and powers, and as to the use and effect of said so-called "fighting steamers" are correctly or truly set forth in the petition, and they say that the facts in regard thereto are as follows, and not otherwise.

About March, 1908, lines known as the Russian Volunteer Fleet and the Russian-American Line, which were engaged in the transportation of steerage passengers between Libau and New York, and about April, 1909, the Uranium Steamship Company, under the name of the Northwest Transport Line and various other names, which was engaged in such transportation between Rotterdam and New York, adopted the plan of making such excessively low steerage rates that steerage passengers could not be carried therefor except at a loss. So long as said lines sought to secure such traffic only by fair and legitimate methods of competition, the defendants did not reduce their rates in competition with said lines; but when said lines made such excessively low rates, and not until then, the defendants agreed that a committee of three in the United States should be authorized, whenever a vessel of said competing lines was booking passengers from New York at such low rates, to make a reduced rate for such one of the defendants' steamers sailing from New York at about the same time with the competing vessel as the committee might name; and it was also agreed that, in case the bookings for the steamer so named by the committee should exceed the capacity of such steamer, other steamers of the defendants sailing at about the same time should carry the excess and that the loss due to the difference between the reduced rate and the regular rates of the steamers carrying such excess passengers should be shared by the defendants. Said agreement was thereafter put into effect, but no steamer of the defendants was at any time despatched or its time of

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sailing or destination changed with reference to the sailings of the competing vessels, and the reduced rates made for defendants' vessels were at no time lower than the rates which, as these defendants are informed and believe, were made by such competing vessels.

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The sole intent and purpose of said agreement and action on the part of defendants was to restrict, so far as possible, the loss resulting from such excessively low rates of competing vessels, and was not in or for the execution or furtherance of or to effect the objects of any unlawful combination or conspiracy or to eliminate or destroy competition on the part of said lines, or to force them out of business, or for any other unlawful, improper or unfair purpose. To have reduced the steerage rates on all of the defendants' steamers would have resulted in enormous loss and the driving out of business of the weaker among them, and the method adopted was necessary and reasonable in order to protect the defendants against such unfair and unnatural competition.

**DENIAL THAT THE RUSSIAN VOLUNTEER FLEET WAS  
DRIVEN OUT OF BUSINESS.**

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14. They admit that from the month of March until the month of June, 1908, or thereabouts, the Russian Volunteer Fleet advertised steamers to sail from the port of New York to the port of Libau, in Russia, and advertised for and solicited persons to sail as third-class or steerage passengers upon such ships. They deny that said ships were thoroughly equipped for handling such traffic, but say, on the contrary, on information and belief, that such ships were small and poorly equipped for steerage transportation. They deny that the facts as to the competition of steamers of the defendant lines with the ships of the Russian Volunteer Fleet are truly and correctly set forth in

the petition, and say that the true facts with regard thereto are as stated in paragraph 13 of this answer; they deny that the Russian Volunteer Fleet incurred loss or was forced to retire from the third-class or steerage business between New York and Russia by reason of any unfair or unlawful competition on the part of the defendant steamship lines; but they admit that in or about the month of July, 1908, said fleet withdrew its steamships from the New York Libau service and has ever since ceased to operate said line between said ports.

And they say that the reason for the withdrawal of said Russian Volunteer Fleet from said business was not because of any agreement or action of the defendants, but was solely because of the inferior character of its service and lack of sufficient funds and because of its action in carrying steerage passengers at such excessively low rates, and the defendants say that the retirement of the Russian Volunteer Fleet was not in fact any detriment or loss to the public or to persons wishing to travel third-class or steerage between New York and Russia.

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DENIAL THAT THE RUSSIAN-AMERICAN LINE WAS  
DRIVEN OUT OF COMPETITION AND FORCED INTO  
UNLAWFUL COMBINATION OR CONSPIRACY.

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15. They admit that from the month of March until the month of September, 1908, or thereabouts, the defendant the Russian-American Line was engaged in operating a line of steamships from the port of New York to the port of Libau, Russia, and in carrying thereon third-class or steerage passengers, and they admit that in conducting said business it was in competition to a certain extent with certain of the other defendant steamship lines, and that during said period it advertised its steamers to sail from the port of New York and advertised for and solicited persons



to travel upon its ships as third-class or steerage passengers; but they deny that the facts with reference to the use of so-called "fighting steamers" are truly or correctly set forth in the petition, and say that the true facts in regard thereto are as stated in paragraph 13 of this answer. They deny that the Russian-American Line incurred financial loss in the conduct of its third-class or steerage traffic as the result of any unfair or unlawful competition on the part of the defendants, but they say that any financial loss suffered by said Russian-American Line was due solely to its course in charging excessively low rates and was not due to any agreement or action on the part of the defendants, and they deny that it unlawfully or wrongfully sought admission to any unlawful combination or conspiracy in order to be permitted to continue in said business or otherwise; and they deny that the facts in reference to its admission into the Atlantic Conference are truly or correctly set forth in said petition, and they say that the true facts in regard thereto are alleged in paragraph 8 of this answer. And they say that said Russian-American Line, by greatly improving the character of its vessels and service and by abandoning the practice of carrying steerage passengers at such excessively low rates, have been able to continue and establish its service, as these defendants are informed, upon a successful basis.

DENIAL OF UNFAIR COMPETITION AGAINST THE  
URANIUM STEAMSHIP COMPANY.

16. They admit that about April 1, 1909, the Uranium Steamship Company, Limited, began to operate and has ever since operated a regular line of steamships under different names and styles between the ports of New York and Rotterdam, and began to carry and has ever since carried third-class or steerage passengers between said ports, and that said company has



competed to some extent with some of the defendant steamship lines in the carriage of third-class or steerage passengers, and that said company has not been a party to the contract of February 5, 1908; but they deny that the defendant steamship lines on or about April 1, 1909, or at any other time, in and for the execution of any unlawful combination or conspiracy, took any action with regard to the use of steamers in competition with the steamers of said company, and they allege that the true facts with relation to the use of so-called "fighting steamers" are truly set forth in paragraph 13 of this answer, and that the facts are as therein stated and not otherwise.

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They admit that in March, 1910, the committee of three in New York was disbanded and that since that time steamers employed to protect the defendant lines against unfair and unnatural competition have been selected and their rates fixed from time to time by the defendant lines in Europe, and that notices of such action are now sent by them to the individual defendants representing them in this country, and the rates fixed have been put in force by notices sent out by the individual defendants through the agents throughout the United States.

They deny that by reason of any illegal or oppressive measures the Northwest Transport Line has at any time been prevented from obtaining a fair and reasonable share of said traffic or forced to carry said traffic at a financial loss, and they say that said Northwest Transport Line is still continuing in said steerage business and has a fair and reasonable share thereof, and if it has suffered loss in said business the sole reason therefor is the inferior character of its service and its excessively low rates, which have at all times been lower than any rates of the defendants.

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They deny that in pursuance of any unlawful combination, conspiracy or agreement, or to prevent other

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persons or corporations from engaging in any traffic they have agreed that no one of them shall continue in its employ as agent for the sale of tickets over its line any person who shall act as agent for the sale of third-class or steerage tickets over any independent line in competition with the defendant lines. They deny that any such agreement or manner of employing agents is adopted as a part of any illegal or oppressive attack upon the Northwest Transport Line or any other steamship line; but they say that the defendant lines have agreed not to employ as agents persons who act as agents for steamship lines which have

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been engaged or are threatening to engage in unfair competition with the lines of the defendants, and they say that this is reasonable and necessary for the proper protection of themselves and their business and as a means to safeguard the interests of intending passengers against irresponsible steamship lines and their agents, and to prevent fraud and injury to such passengers.

## DENIAL OF EXCESSIVE AND ARBITRARY RATES.

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17. They deny that at any time and in pursuance of any combination, conspiracy or contract, or otherwise, they have arbitrarily fixed their rates for steerage transportation for the purpose as alleged in the petition, or otherwise, and they deny that in fixing their rates they have deprived or are depriving the public of any benefit whatsoever; and they say that on the contrary the public has had the benefit of exceedingly low rates and of superior facilities, and that such rates and such facilities are far more favorable to the public than would have resulted had the defendants not entered into the lawful and reasonable agreement with reference to the conduct of their business as hereinbefore set forth.

DENIAL OF PENAL ENFORCEMENT OF THE TERMS OF  
ANY UNLAWFUL CONTRACT.

18. They deny all the allegations of the petition with reference to penal enforcement of the terms of the contract between the defendants and all duress upon or between the parties to said contract as alleged in the petition, and for the terms of said contract they refer to the original thereof when the same shall be produced on the trial hereof.

VI.

DENIAL OF MONOPOLY.

19. They deny that by any unlawful contract or unlawful practices the defendant steamship lines have obtained or attempted to obtain a virtual or other monopoly of the traffic of transporting steerage passengers in trade and commerce between the United States and foreign nations or of any part thereof. They are not informed as to the percentage of steerage passenger traffic between Europe and North America carried in ships belonging to the defendant steamship lines, and therefore leave the petitioner to make such proof thereof as it may be advised. They deny that such steerage passenger traffic or any portion thereof is regulated, limited or restrained by means of any unlawful contract whatsoever, and they say that they are not informed as to what percentage of the steerage passenger traffic is conducted in accordance with the terms of the contract of February 5, 1908, and therefore leave the petitioner to make such proof thereof as it may be advised.

20. Further answering, these defendants say that the business of transporting passengers between European ports and ports in the United States is international in its character, and as such is not subject to

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regulation by the laws of any one nation but can be regulated only by international agreements or treaties.

21. Further answering, these defendants say that in enacting the Act of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and the acts amendatory thereof and supplemental thereto, the Congress of the United States did not intend to, and did not thereby, make agreements entered into by persons or corporations engaged in the transportation of passengers between European ports and ports of the United States unlawful.

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22. Further answering, these defendants say that in so far as the business of transporting passengers from Europe to the United States is concerned, no part of said business is transacted within the United States, but said business is wholly transacted in foreign countries and on the high seas. The only part of said business performed in the United States is the landing of passengers at ports in the United States, which right has been granted by treaty between the United States and the several nations to whose flags said steamers belong; and as to the whole of said business of transporting passengers from European ports to ports in the United States the act of Congress aforesaid has not and cannot have any application, force or effect whatsoever.

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23. In the absence of governmental regulation of ocean transportation between the United States and foreign nations, such as exists as to railroad transportation, agreements among persons engaged in such ocean transportation are essential. Without such regulation or agreements, the weaker lines would be driven out of business and only the strongest would survive. The agreement into which the defendants

have entered does not result in undue or unreasonable restraint of foreign commerce. Interpreted reasonably, it does not restrain trade and commerce with foreign nations, nor does it create, or attempt to create, a monopoly. The very nature of the business is such as to make it impossible that a monopoly should be created. Competition on the seas is necessarily limited only by the number of vessels in existence. Any ship owner may employ his vessels where he will. No franchise is needed; all are free to sail the seas; and, unlike any other business, those engaged in ocean transportation may at any time change from one trade to another. Steamers engaged in one trade may enter another temporarily, and, after demoralizing business and ruining those engaged therein, may return to their former routes. Thus, a great steamship company engaged in a worldwide business may, for a period short or long, but sufficient for its purpose, concentrate its forces and by unnatural and cut-throat competition drive out of business the weaker lines regularly established and engaged in the service. In this way it could destroy all of its weaker competitors.

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Agreements, therefore, among those engaged in the transatlantic trade, like the agreement of these defendants, are reasonable and necessary in order to make possible the continuance of the business. The agreement entered into by the defendants was not for the purpose of creating a monopoly, nor for the purpose of establishing and maintaining excessive and unreasonable rates, nor for the purpose of unlawfully destroying competition or restraining trade and commerce.

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The necessity for such an agreement is shown by the history of the transatlantic trade. At times when no such agreement has been effective, those engaged in the business have reduced rates in competition with each other to such a point that the continuance thereof

would speedily have destroyed all but the strongest lines, and, in fact, such rate wars have been continued to such an extent that weaker lines have actually been forced out of business.

The necessity for such an agreement has also been strikingly shown by the action of the Government with reference to the transportation of steerage passengers by the railroads of the United States. For many years the railroads have divided among themselves by agreement the transportation in the United States of steerage passengers arriving upon the lines of the defendants and others engaged in the transatlantic passenger business. The Interstate Commerce Commission, after a careful investigation of this practice of the railroads, concluded that, in the interest of the public, it should not be disturbed.

The effect of the present agreement between the defendants has not been to cause higher rates, but instead has resulted in steerage passengers receiving far more for their money than formerly. Larger and faster steamers have been put in service with better accommodations for steerage passengers and more frequent sailings, and the facilities for comfort and safety have been greatly increased. All of this has been accomplished notwithstanding the increasingly stringent requirements of the laws of the United States and of the foreign countries from which the steamers sail. The requirements of the United States immigration laws alone have become, and are becoming year by year, more and more severe, and impose upon steamship owners greatly increased expenses. Notwithstanding all this, the charges made by the steamship companies for the service have been uniformly fair and reasonable and have not increased proportionately with the cost of the service. The present rates for steerage transportation are not substantially higher than those of former years. | Such

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rates have not kept pace with the increased burdens upon steamship owners, the improved facilities furnished and the generally higher cost of living. The result, therefore, of agreements among the steamship companies, such as the agreement of February 5, 1908, has been beneficial to the public, and, instead of restraining foreign trade and commerce, has been to protect and develop it.

24. And these defendants now, having fully answered the petition herein, deny all and all manner of unlawful contract, combination, conspiracy, monopolizing or attempt to monopolize, wherewith they are charged by said petition; without this that if there is any other matter, cause or thing in the petition contained material or necessary for these defendants to make answer to and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, the same is not true to the knowledge or belief of these defendants or to any of them; all of which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

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NEDERLANDSCH-AMERIKAANSCH-  
STOOM-  
VAART MAATSCHAPPIJ (HOLLAND-  
AMERICA LINE).

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By Adrian Gips, Agent.

ADRIAN GIPS.

BURLINGHAM, MONTGOMERY & BEECHER,  
Solicitors for said Defendants.

CHARLES C. BURLINGHAM,  
NORMAN B. BEECHER,  
EVERETT MASTEN,  
Of Counsel.

- 304 **Answer of International Mercantile Marine Company, International Navigation Company, Limited, British & North Atlantic Steam Navigation Company, Limited, Societe Anonyme De Navigation Belge Americaine, Oceanic Steam Navigation Company, Limited and Philip A. S. Franklin.**

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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THE UNITED STATES OF AMERICA,  
Petitioner  
against

HAMBURG-AMERIKANISCHE PAC-  
KET - FAHRT - ACTIEN - GESELL-  
SCHAFT, and others,  
Defendants.

In Equity.

To the Honorable the Judges of the Circuit Court of the United States for the Southern District of New York, Sitting in Equity:

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The joint and several answer of the defendants, International Mercantile Marine Company, International Navigation Company, Limited, British and North Atlantic Steam Navigation Company, Limited, Societe Anonyme de Navigation Belge Americaine and Oceanic Steam Navigation Company, Limited, and Philip A. S. Franklin, to the petition of the United States of America herein:

These defendants respectively, now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception, or otherwise, that



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can or may be had or taken to the many errors, uncertainties, and imperfections in said petition contained, for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering, allege:

The individual defendant Philip A. S. Franklin, who joins in this answer, for himself avers that he has not personal knowledge with reference to many of the averments of the petition or of the admissions, denials and averments in this answer set forth, so far as the same relate to matters alleged to have taken place abroad or with which he had no personal connection; but he says that all of the admissions, denials and averments in this answer set forth are true to the best of his knowledge, information or belief. And the corporate defendants herein, in making their denials, admissions and averments, except in so far as they refer particularly to the individual defendant Philip A. S. Franklin, intend the same to refer only to their own acts and transactions. 208

## I.

## DENIAL OF COMBINATION AND CONSPIRACY.

1. These defendants admit that the corporate defendants herein are engaged, but deny that the individual defendants are engaged, in foreign trade and commerce as common carriers of freight and passengers, including third-class or steerage passengers, between ports in the United States and ports in Europe, except that they say, upon information and belief, that the defendant, Canadian Pacific Railway Company, is not so engaged, and they deny that the corporate defendants are engaged as common carriers of passengers and freight between inland points in the 309

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United States and ports or inland points in Europe, Asia or Africa, and they deny that in respect to the business alleged in Article I of the petition they are violating the provisions of the Act of Congress passed July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies" and the acts amendatory thereof and supplemental thereto; and they deny, upon information and belief, that any of their codefendants are so engaged, and they deny that at any time they have been, or are now, engaged in any combination or conspiracy in violation of said acts.

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II.

AS TO THE DESCRIPTION OF THE DEFENDANTS AND THE TRADE AND COMMERCE WHICH THEY CONDUCT.

2. They admit the allegations contained in the paragraphs of Article II of the petition numbered 3, 4, 5, 6, 12, 19, and 22, except that they deny that the defendant, John Lee, is, or was at the time when the petition was filed, an officer of the International Mercantile Marine Company or of the International Navigation Company, Limited, and allege that this proceeding has been discontinued as to said defendant, John Lee, and except that they deny that the defendant, Philip A. S. Franklin, is now, or at any time has been, an officer of the International Navigation Company, Limited.

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3. They deny each and every allegation contained in the paragraph of Article II of the petition numbered 24, except that they admit that some of the defendant steamship lines are in some respects natural competitors.

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4. As to the allegations of the remaining paragraphs of Article II of the petition they are not sufficiently informed to make answer thereto and, therefore, leave the petitioner to make such proof in relation thereto as it may be advised.

### III.

AS TO THE DESCRIPTION OF THE TRADE AND COMMERCE WHICH THE DEFENDANTS ARE CHARGED WITH MONOPOLIZING AND ATTEMPTING AND CONSPIRING TO MONOPOLIZE.

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5. They deny that immigration from Europe to the United States has steadily increased, and say that it reached its maximum in the year 1907, and that last year it was less than in any year for ten years prior thereto. They admit that the traffic back and forth is large, but they deny that it is very lucrative. The other allegations of Article III of this petition they deny, except that they admit that the steamship companies have been extending their facilities for handling such traffic, as well as their other business, and that the income from third-class or steerage traffic between Europe and North America forms an important part of the revenue of the steamship companies.

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### IV.

DENIAL OF COMBINATION AND CONSPIRACY.

6. They deny that these defendants have been, or are, engaged in the United States or elsewhere in any unlawful combination or conspiracy to restrain trade and commerce of the United States with foreign nations, or any part thereof, or to monopolize the same, and they deny that they are, or have been, engaged in

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the Southern District of New York, or elsewhere, in any combination or conspiracy to destroy competition in the business of transporting third-class or steerage passengers between ports in the United States of America and ports in Europe, and they deny that they have sought to accomplish any of said purposes by eliminating, suppressing or destroying competition in such traffic, and they deny that they have sought, or are seeking, to bring about any combination or conspiracy in the manner and by the means set forth in the petition or in any other manner or by any other means whatsoever; and, upon information and belief, they deny that any of their codefendants have been, or are, engaged in any of the acts or things charged against these defendants in Article IV of the petition.

## V.

### DENIAL OF UNLAWFUL COMBINATION AND CONSPIRACY CHARGED AND OF ALLEGED MANNER AND MEANS OF ACCOMPLISHING SAME.

#### A

*As to agreement of February 5, 1908*

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7. They admit that on February 5, 1908, at London, England, the defendants mentioned in paragraph 1 of Subdivision A of Article V of the petition entered into an agreement, whereof a copy which it believes to be substantially correct is annexed to the petition and marked Exhibit A, but for greater certainty it prays leave to refer to the original upon the trial hereof; but they deny that said agreement was unlawful or was entered into pursuant to any unlawful combination or conspiracy. They deny all the other allegations of Subdivision A of Article V of the petition.

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except as may appear from the original agreement of February 5, 1908; and they say further that said agreement was and is lawful by the laws of England, where it was entered into, and by the laws of the United States.

*As to the Russian American Line becoming a party to agreement*

8. They deny that pursuant to the provisions of any unlawful contract or in furtherance of any unlawful combination or conspiracy, the Russian American Line was admitted to membership in the Atlantic Conference; but they admit that at about the time mentioned in the petition the Russian American Line entered into an agreement with the other defendant steamship lines with reference to its steerage or third class business, and became a member of the Atlantic Conference, and that the agreement so entered into provided for a percentage of such traffic for said Russian American Line, and for answer to the allegations contained in subdivision B of the petition as to the terms of said agreement of February 5, 1908, they refer to said agreement itself when it shall be produced upon the trial hereof. 320

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# C

*Denial of unlawful acts*

9. They deny that since the making of the contract of February 5, 1908, or at any other time, all free and natural competition between the defendant steamship lines in the establishment of rates and the furnishing of facilities for steerage traffic has been or is thereby wholly eliminated, and they say that they are not informed as to whether the business of all of

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the defendant steamship lines in so far as it consists in the carriage of the steerage traffic referred to in the petition has been, or at the date of the filing of the petition was, carried on by each and every one of them in all respects in accordance with the terms and provisions of said contract or in accordance with the terms and provisions of resolutions adopted by said contracting parties at meetings held in pursuance thereof, and they therefore leave the petitioner to make such proof thereof as it may be advised; and, on the contrary, they say that now and at all times there is and has been active competition between all of the steamship lines.

**323**

10. They deny each and every allegation contained in the paragraph numbered 2 of subdivision C of Article V of the petition, and in particular they deny that they have entered into any unlawful agreement, combination or conspiracy, and they deny that any agreements into which they have entered necessarily involved the execution of their terms, scope and intent throughout the United States, or more particularly in the Southern District of New York; and they deny that since February 5, 1908, or at any other time, any of the individual defendants has been designated or established by his respective line at his respective office in the United States as agent for such line to carry out or make effective any unlawful agreement, combination or conspiracy whatsoever; and they deny that said individual defendants, at their respective offices or agencies throughout the United States or in the Southern District of New York, or at any other place or time, have been or are carrying out or executing any acts for the accomplishment of any unlawful combination, conspiracy or agreement whatsoever.

**324**

11. They deny that at any time whatever the individual defendants in the Southern District of New

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York or elsewhere have received orders or instructions from their respective principals with respect to the accomplishment of the objects and purposes of any unlawful combination or conspiracy whatsoever, or that any of said individual defendants have within said Southern District of New York or elsewhere complied with or carried out any such instructions.

DENIAL OF AGREEMENT TO DESTROY COMPETITION OF  
INDEPENDENT LINES

12. They deny that in and for the execution of any unlawful combination or conspiracy or agreement, or in furtherance thereof, or otherwise, any or all of the defendant steamship lines, at a meeting held March 25, 1908, or at any other time, agreed that they should act together to eliminate and destroy the competition of any persons or corporations whatsoever, either in the business of carrying steerage passengers between Europe and the United States in competition with any or all of the defendant steamship lines or otherwise. \* 326

DENIAL OF ARRANGEMENT TO USE SO-CALLED "FIGHT-  
ING STEAMERS" TO DESTROY COMPETITION, AND  
THAT COMPETITORS ARE CRUSHED 327

13. They deny that in and for the execution of any resolution as alleged or for the purpose of effecting the objects of any unlawful combination or conspiracy the defendant steamship lines appointed a committee for the selection of so-called "fighting steamers," and they deny that the facts with reference to the appointment of a committee and its authority and powers, and as to the use and effect of said so-called "fighting steamers" are correctly or truly set forth in the petition, and they say that the facts in regard thereto are as follows, and not otherwise:

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The rates charged for transportation of steerage passengers between Europe and the United States have uniformly been exceedingly low so that the range of competition in rates has necessarily been very limited. A slight reduction in rates would bring the remuneration received for such traffic below its cost to the steamship lines. From time to time companies have been formed to engage in the business, with a few steamers and inadequate facilities. In order to attract business from the established lines, these companies have been willing to adopt rates which in many instances were below the actual cost of furnishing such transportation. The result has been that such companies have been able to continue in business only for a short time until their resources have been exhausted. While they have been so engaged, however, the effect of quoting rates unremunerative and below cost has been to divert from the established lines the traffic which they would otherwise have received, and seriously to disorganize their business. The only method of protecting themselves against such unfair and unnatural competition has been to meet such rates as far as practicable. To have reduced the steerage rates on all their steamers would have resulted in enormous loss to such lines and the driving out of business of the weaker among them. In order to prevent such a result, which would be injurious not only to the lines themselves but to the public, the established lines have from time to time, when such unfair and unnatural competition was threatened, adopted the policy of meeting such competition by selecting certain steamers for that purpose. Accordingly, the defendant lines appointed a committee of three of their representatives at New York City to select from among the steamers of the defendant lines steamers for this purpose, the rates on which were fixed and advertised at such a sum as was necessary to meet the rates quoted by the

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steamers of their competitors, but at no time were the rates so fixed lower than the rates charged, as these defendants are informed and believe, by such other steamers, nor was any steamer of the defendants at any time despatched nor its time of sailing or destination changed with reference to the sailings of the vessels of competing lines. When the number of passengers procuring tickets for the steamers so selected was in excess of their carrying capacity the excess passengers were carried by other steamers of the defendant lines, and the lines so carrying such excess were compensated by the other lines for the resulting loss. In adopting the methods above described, the defendant lines have not acted in any unlawful manner or in pursuance of any unlawful combination, conspiracy or agreement in restraint of trade or otherwise, but solely for the purpose of protecting themselves against unfair and unnatural competition and only so far as was absolutely necessary and reasonable for that purpose. 332

#### DENIAL THAT THE RUSSIAN VOLUNTEER FLEET WAS DRIVEN OUT OF BUSINESS

14. They admit that from the month of March until the month of June, 1908, or thereabouts, the Russian Volunteer Fleet advertised steamers to sail from the port of New York to the port of Libau, in Russia, and advertised for and solicited persons to sail as third class or steerage passengers upon such ships. They deny that said ships were thoroughly equipped for handling such traffic, but say, on the contrary, on information and belief, that such ships were small and poorly equipped for steerage transportation. They deny that the facts as to the competition of steamers of the defendant lines with the ships of the Russian Volunteer Fleet are truly and correctly set forth in 333

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the petition, and say that the true facts with regard thereto are as stated in paragraph 13 of this answer; they deny that the Russian Volunteer Fleet incurred loss or was forced to retire from the third class or steerage business between New York and Russia by reason of any unfair or unlawful competition on the part of the defendant steamship lines; but they admit that in or about the month of July, 1908, said fleet withdrew its steamships from the New York-Libau service and has ever since ceased to operate said line between said ports.

335 And they say that the reason for the withdrawal of said Russian Volunteer Fleet from said business was not because of any agreement or action of the defendants, but was solely because of the inferior character of its service and lack of sufficient funds and because of its action in carrying steerage passengers at such excessively low rates, and the defendants say that the retirement of the Russian Volunteer Fleet was not in fact any detriment or loss to the public or to persons wishing to travel third-class or steerage between New York and Russia.

DENIAL THAT THE RUSSIAN AMERICAN LINE WAS  
DRIVEN OUT OF COMPETITION AND FORCED INTO  
336 UNLAWFUL COMBINATION OR CONSPIRACY

15. They admit that from the month of March until the month of September, 1908, or thereabouts, the defendant the Russian-American Line was engaged in operating a line of steamships from the port of New York to the port of Libau, Russia, and in carrying thereon third-class or steerage passengers, and they admit that in conducting said business it was in competition to a certain extent with certain of the other defendant steamship lines, and that during said period it advertised its steamers to sail from the port of

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New York and advertised for and solicited persons to travel upon its ships as third class or steerage passengers; but they deny that the facts with reference to the use of so-called "fighting steamers" are truly or correctly set forth in the petition, and say that the true facts in regard thereto are as stated in paragraph 13 of this answer. They deny that the Russian-American Line incurred financial loss in the conduct of its third class or steerage traffic as the result of any unfair or unlawful competition on the part of the defendants, but they say that any financial loss suffered by said Russian-American Line was due solely to its course in charging excessively low rates and was not due to any agreement or action on the part of the defendants, and they deny that it unlawfully or wrongfully sought admission to any unlawful combination or conspiracy in order to be permitted to continue in said business or otherwise; and they deny that the facts in reference to its admission into the Atlantic Conference are truly or correctly set forth in said petition, and they say that the true facts in regard thereto are alleged in paragraph 8 of this answer. 338

And they say that said Russian American Line, by greatly improving the character of its vessels and services and by abandoning the practice of carrying steerage passengers at such excessively low rates, has been able to continue and establish its service, as these defendants are informed, upon a successful basis. 339

#### DENIAL OF UNFAIR COMPETITION AGAINST THE URANIUM STEAMSHIP COMPANY

16. They admit that about April 1, 1909, the Uranium Steamship Company, Limited, began to operate and has ever since operated a regular line of steamships under different names and styles between the

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ports of New York and Rotterdam, and began to carry and has ever since carried third-class or steerage passengers between said ports, and that said company has competed to some extent with some of the defendant steamship lines in the carriage of third-class or steerage passengers, and that said company has not been a party to the contract of February 5, 1908; but they deny that the defendant steamship lines on or about April 1, 1909, or at any other time, in and for the execution of any unlawful combination or conspiracy, took any action with regard to the use of steamers in competition with the steamers of said

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company, and they allege that the true facts with relation to the use of so-called "fighting steamers" are truly set forth in paragraph 13 of this answer, and that the facts are as therein stated and not otherwise.

They admit that in March, 1910, the committee of three in New York was disbanded and that since that time steamers employed to protect the defendant lines against unfair and unnatural competition have been selected and their rates fixed from time to time by the defendant lines in Europe, and that notices of such action are now sent by them to the individual defendants representing them in this country, and the rates fixed have been put in force by notices sent out by the individual defendants through the agents throughout the United States.

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They deny that by reason of any illegal or oppressive measures the Northwest Transport Line has at any time been prevented from obtaining a fair and reasonable share of said traffic or forced to carry said traffic at a financial loss, and they say that said Northwest Transport line is still continuing in said steerage business and has a fair and reasonable share thereof, and if it has suffered loss in said business the sole reason therefor is the inferior character of its

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service and its excessively low rates, which have at all times been lower than any rates of the defendants.

They deny that in pursuance of any unlawful combination, conspiracy or agreement, or to prevent other persons or corporations from engaging in any traffic they have agreed that no one of them shall continue in its employ as agent for the sale of tickets over its line any person who shall act as agent for the sale of third-class or steerage tickets over any independent line in competition with the defendant lines. They deny that any such agreement or manner of employing agents is adopted as a part of any illegal or oppressive attack upon the Northwest Transport Line or any other steamship line; but they say that the defendant lines have agreed not to employ as agents persons who act as agents for steamship lines which have been engaged or are threatening to engage in unfair competition with the lines of the defendants, and they say that this is reasonable and necessary for the proper protection of themselves and their business and as a means to safeguard the interests of intending passengers against irresponsible steamship lines and their agents, and to prevent fraud and injury to such passengers. 344

#### DENIAL OF EXCESSIVE AND ARBITRARY RATES 345

17. They deny that at any time and in pursuance of any combination, conspiracy or contract, or otherwise, they have arbitrarily fixed their rates for steerage transportation for the purpose as alleged in the petition, or otherwise, and they deny that in fixing their rates they have deprived or are depriving the public of any benefit whatsoever; and they say that on the contrary the public has had the benefit of exceedingly low rates and of superior facilities, and that such rates and such facilities are far more favorable

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to the public than would have resulted had the defendants not entered into the lawful and reasonable agreement with reference to the conduct of their business as hereinbefore set forth.

#### DENIAL OF PENAL ENFORCEMENT OF THE TERMS OF ANY UNLAWFUL CONTRACT

347 18. They deny all the allegations of the petition with reference to penal enforcement of the terms of the contract between the defendants and all duress upon or between the parties to said contract as alleged in the petition, and for the terms of said contract they refer to the original thereof when the same shall be produced on the trial hereof.

### VI

#### DENIAL OF MONOPOLY

348 19. They deny that by any unlawful contract or unlawful practices the defendant steamship lines have obtained or attempted to obtain a virtual or other monopoly of the traffic of transporting steerage passengers in trade and commerce between the United States and foreign nations or of any part thereof. They are not informed as to the percentage of steerage passenger traffic between Europe and North America carried in ships belonging to the defendant steamship lines, and therefore leave the petitioner to make such proof thereof as it may be advised. They deny that such steerage passenger traffic, or any portion thereof, is regulated, limited or restrained by means of any unlawful contract whatsoever, and they say that they are not informed as to what percentage of the steerage passenger traffic is conducted in accordance with the terms of the contract of February 5, 1908, and

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therefore leave the petitioner to make such proof thereof as it may be advised.

20. Further answering, these defendants say that the business of transporting passengers between European ports and ports in the United States is international in its character, and as such is not subject to regulation by the laws of any one nation but can be regulated only by international agreements or treaties.

21. Further answering, these defendants say that in enacting the Act of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and the acts amendatory thereof and supplemental thereto, the Congress of the United States did not intend to, and did not thereby, make agreements entered into by persons or corporations engaged in the transportation of passengers between European ports and ports of the United States unlawful. 350

22. Further answering, these defendants say that in so far as the business of transporting passengers from Europe to the United States is concerned, no part of said business is transacted within the United States, but said business is wholly transacted in foreign countries and on the high seas. The only part of said business performed in the United States is the landing of said passengers at ports in the United States, which right has been granted by treaty between the United States and the several nations to whose flags said steamers belong; and as to the whole of said business of transporting passengers from European ports to ports in the United States the act of Congress aforesaid has not and cannot have any application, force or effect whatsoever. 351

23. Further answering, these defendants say that certain of the steamers of the defendant lines, namely,

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the *New York*, *Philadelphia*, *St. Louis* and *St. Paul* of the American Line, are American vessels hailing from New York and flying the American flag; that the cost of building and operating steamships under the American flag is about forty per cent higher than that of building and operating foreign vessels; that by the laws of the United States all officers of vessels of the United States are required to be citizens of the United States; that the rate of wages paid to officers and crews shipped in the United States is far higher than in the European countries; that under the provisions of the Ocean Mail Act of March 3, 1891, pursuant to which the above named vessels are employed in the mail service of the United States, vessels must not only be American built and owned, and officered by American citizens, but must have crews of which at least one-half must be citizens of the United States,—all of which, and many other provisions of law, place especially heavy burdens on American vessels.

Further answering, these defendants say that by said Ocean Mail Act of 1891, the American steamships above named may at any time be taken and used by the United States as transports or cruisers, as in fact all of them were taken in the war with Spain in the year 1898.

These defendants verily believe, and state, that but for the agreement of February 5, 1908, or a similar agreement with owners of other transatlantic steamships it would be impossible for the American Line to engage in ocean transportation in competition with foreign steamship lines, and it would be impossible for it to operate its vessels except at a loss even greater than that at which they are now operated, and that unless the owners of American steamships are permitted to enter into agreements with foreign steamship lines whereby they can secure a part of the busi-



ness of transporting steerage passengers between the United States and foreign countries at fair and reasonable rates, such American lines would be compelled to cease to operate their steamers or to transfer them from the American flag to foreign flags, and that it is of vital importance to the United States that the few remaining steamers under the American flag engaged in foreign trade should not be withdrawn. And these defendants say that in enacting the Act of Congress of July 2, 1890, it was not the intention of the Congress to destroy American shipping and drive the American flag from the seas.

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24. In the absence of governmental regulation of ocean transportation between the United States and foreign nations, such as exists as to railroad transportation, agreements among persons engaged in such ocean transportation are essential. Without such regulation or agreements, the weaker lines would be driven out of business and only the strongest would survive. The agreement into which the defendants have entered does not result in undue or unreasonable restraint of foreign commerce. Interpreted reasonably, it does not restrain trade and commerce with foreign nations, nor does it create, or attempt to create, a monopoly. The very nature of the business is such as to make it impossible that a monopoly should be created. Competition on the seas is necessarily limited only by the number of vessels in existence. Any ship owner may employ his vessels where he will. No franchise is needed; all are free to sail the seas; and, unlike any other business, those engaged in ocean transportation may at any time change from one trade to another. Steamers engaged in one trade may enter another temporarily, and, after demoralizing business and ruining those engaged therein, may return to their former routes. Thus, a great steamship com-

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pany engaged in a worldwide business may, for a period short or long, but sufficient for its purpose, concentrate its forces and by unnatural and cut-throat competition drive out of business the weaker lines regularly established and engaged in the service. In this way it could destroy all of its weaker competitors.

359 Agreements, therefore, among those engaged in the transatlantic trade, like the agreement of the defendants here, are reasonable and necessary in order to make possible the continuance of the business. The agreement entered into by the defendants here was not for the purpose of creating a monopoly, nor for the purpose of establishing and maintaining excessive and unreasonable rates, nor for the purpose of unlawfully destroying competition or restraining trade and commerce.

The necessity for such an agreement is shown by the history of the transatlantic trade. At times when no such agreement has been effective, those engaged in the business have reduced rates in competition with each other to such a point that the continuance thereof would speedily have destroyed all but the strongest lines, and, in fact, such rate wars have been continued to such an extent that weaker lines have actually been forced out of business.

360 The necessity for such an agreement has also been strikingly shown by the action of the Government with reference to the transportation of steerage passengers by the railroads of the United States. For many years the railroads have divided among themselves by agreement the transportation in the United States of steerage passengers arriving upon the lines of the defendants and others engaged in the transatlantic passenger business. The Interstate Commerce Commission, after a careful investigation of this practice of the railroads, concluded that, in the interest of the public, it should not be disturbed.

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The effect of the present agreement between the defendants has not been to cause higher rates, but instead has resulted in steerage passengers receiving far more for their money than formerly. Larger and faster steamers have been put in service with better accommodations for steerage passengers and more frequent sailings, and the facilities for comfort and safety have been greatly increased. All of this has been accomplished notwithstanding the increasingly stringent requirements of the laws of the United States and of the foreign countries from which the steamers sail. The requirements of the United States immigration laws alone have become and are becoming year by year, more and more severe, and impose upon steamship owners greatly increased expenses. Notwithstanding all this, the charges made by the steamship companies for the service have been uniformly fair and reasonable and have not increased proportionately with the cost of the service. The present rates for steerage transportation are not substantially higher than those of former years. Such rates have not kept pace with the increased burdens upon steamship owners, the improved facilities furnished and the generally higher cost of living. The result, therefore of agreements among the steamship companies, such as the agreement of February 5, 1908, has been beneficial to the public, and, instead of restraining foreign trade and commerce, has been to protect and develop it. 362 363

25. And these defendants now, having fully answered the petition herein, deny all and all manner of unlawful contract, combination, conspiracy, monopolizing or attempt to monopolize, wherewith they are charged by said petition; without this that if there is any other matter, cause or thing in the petition contained material or necessary for these defendants to

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make answer to and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, the same is not true to the knowledge or belief of these defendants or to any of them; all of which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

INTERNATIONAL MERCANTILE MARINE COMPANY.

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INTERNATIONAL NAVIGATION COMPANY, LIMITED.

BRITISH & NORTH ATLANTIC STEAM NAVIGATION COMPANY, LIMITED.

SOCIETE ANONYME DE NAVIGATION BELGE AMERICAINE.

OCEANIC STEAM NAVIGATION COMPANY, LIMITED.

By Philip A. S. Franklin, Agent,  
PHILIP A. S. FRANKLIN.

BURLINGHAM, MONTGOMERY & BEECHER,  
Solicitors for said Defendants.

366 CHARLES C. BURLINGHAM,  
NORMAN B. BEECHER,  
EVERETT MASTEN,  
Of Counsel.

**The Joint and Several Answer of the  
Defendants Gustav H. Schwab, Her-  
man C. Von Post and Gustav Schwab,  
Junior, to the Petition of the United  
States of America, Filed Herein on  
January 4, 1911.**

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UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK,

In the Second Circuit.

THE UNITED STATES OF AMERICA,  
Petitioner,  
against

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HAMBURG - AMERIKANISCHE  
PACKET - FARHT - ACTIEN  
GESELLSCHAFT, and others,  
Defendants.

The joint and several answer of the defendants Gustav H. Schwab, Herman C. von Post and Gustav Schwab, Junior, the last named being designated as Gustav H. Schwab, Junior, in said petition, to the petition of the United States of America, filed herein on January 4th, 1911.

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These defendants answering so much and such parts of said petition as they are advised it is material or necessary for them to make answer unto say:

First. They admit that they, the said three named defendants, are residents of the City, County and State and of the Southern District of New York, and are partners doing business under the firm name and style of Oelrichs & Company, with an office and place

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*Answer of Gustav H. Schwab, et al.*

of business at No. 5 Broadway, New York City; that they are and since the first day of January, 1909, have been general agents in the United States of the North German Lloyd Line, and in general charge of its affairs within the United States, and hold themselves and their office out to the public as the persons with whom and the place where business may be transacted with the North German Lloyd Line.

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They also admit that prior to the 1st day of January, 1909, the said defendants, Gustav H. Schwab and Herman C. von Post constituted said firm of Oelrichs & Company, with an office and place of business in New York City; and that they, the said two defendants, were for many years and up to the said 1st day of January, 1909, such general agents of said line and in general charge of its affairs and held themselves and their office out to the public as the persons with whom and the place where business might be transacted with said Line.

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They allege, however, that the said defendant Herman C. von Post, although nominally and for some purposes actually a member of said firm, has taken no part whatever in the business thereof or in the business of said North German Lloyd for twelve years and upwards last past; that said defendant, Gustav Schwab, Junior, did not become a member of said firm till said 1st day of January, 1909, and took no part in the business of said firm or in the affairs or business of said North German Lloyd Line prior to said date.

They also allege that the defendant Gustav H. Schwab has been absent from the City of New York even since the 7th day of March, 1910, and since that date said defendant has taken no active part in the business of said firm or in the affairs and business of said North German Lloyd Line.

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And these defendants, each for himself, further says, that he has read or has had read to him the answer of the said Norddeutscher Lloyd, otherwise known as the North German Lloyd Line, to the said petition; that the same is true according to the best of his information and belief, and that he adopts the same in connection herewith as his answer to said petition.

And these defendants having answered fully the petition herein so far as the same contains matter which they are required to answer, each for himself denies all and all manner of unlawful contract, combination, conspiracy, monopoly or attempt or intent to monopolize, and all and all manner of misdoing of every kind wherewith he is or intended to be by the said petition charged without this, that there is any other matter, cause or thing in said petition contained material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain and prove as this Honorable Court shall direct, and prays to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

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GUSTAV H. SCHWAB,  
H. C. VON POST,  
GUSTAV SCHWAB, JR.

CHOATE & LAROCQUE,

Solicitors for said Defendants.

WM. G. CHOATE,  
Of Counsel,

- 376 **The Separate Answer of the Defendant, Norddeutscher Lloyd, Schwab, Schwab, Jr., and Von Post, to the Petition of the United States of America, filed herein on January 4, 1911.**

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

In the Second Circuit.

- 377 THE UNITED STATES OF AMERICA,  
Petitioner,  
against

HAMBURG - AMERIKANISCHE  
PACKET - FARHT - ACTIEN  
GESELLSCHAFT, and others,  
Defendants.

The separate answer of the defendant Norddeutscher Lloyd to the petition of the United States of America, filed herein on January 4, 1911.

- 378 This defendant answering so much and such parts of said petition as it is advised it is material or necessary for it to make answer unto, says:

FIRST: It admits that said defendant is engaged in foreign trade and commerce as common carrier of passengers and freight and incidentally thereto of third-class or steerage passengers between ports of the United States and the City of Bremen, but it denies that it is a common carrier of passengers and freight or of third-class or steerage passengers between inland points in the United States and inland points or any point or place in Europe, Asia or Africa, and it denies upon information and belief that the other



defendants are common carriers of passengers and freight between inland points of the United States and other countries or otherwise than between ports of the United States and points and places in other countries, except that the defendant Canadian Pacific Railway Company is also a common carrier operating a railroad in the Dominion of Canada, and it denies that it is in respect to such trade violating the provisions of the Act of Congress, passed July 2nd, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," and the acts amendatory thereof and supplemental thereto, or any of them; and it denies in respect to the individual defendants, Gustav H. Schwab, Herman C. Von Post and Gustav Schwab, Junior, called in said petition Gustav H. Schwab, Junior, that they or either of them are or is engaged in foreign trade and commerce as common carriers of passengers and freight, either steerage passengers or otherwise, or that they or either of them are violating in respect to such trade or commerce the provisions of said Act of Congress or the acts amendatory thereof or supplementary thereto or any of them, or that said defendant or the individual defendants above named or any or either of them are engaged in any agreement, contract or combination or conspiracy in restraint of trade or commerce between the United States and foreign countries or in any attempt to monopolize, or any contract, combination and conspiracy to monopolize, or in any existing monopoly of such trade and commerce or any part thereof as set forth in the first article of said petition, or otherwise. And in respect to the other defendants named in said petition this defendant leaves them to make such answer to said petition so far as it avers any act, matter or thing done or intended to be done by them respectively as they shall be advised.

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SECOND: Said defendant admits that at all the times mentioned in said petition the said defendant Norddeutscher Lloyd in said petition referred to as the North German Lloyd Line, was and now is a corporation organized and existing under and by virtue of the laws of the City of Bremen in the Empire of Germany, with an office and place of business and agents in charge thereof in the City, County and State and Southern District of New York, and that at all such times it has been and now is engaged in trade and commerce between the United States of America, and foreign nations, to wit, operating regular lines of steamships from the ports of Baltimore in the State of Maryland and New York, in the State of New York, and the port of Galveston, in the State of Texas, to the port of Bremen, in Germany, and transporting between and to and from said ports on its steamships, freight and passengers for hire, and incidentally thereto that class of passengers ordinarily known and described in the steamship trade as third-class or steerage passengers, and that at all such times it has maintained agencies in divers cities in Europe and in the United States at which it has sold contracts for the transportation of freight and passengers on and by its steamships, to and from said ports in the United States, and from and to the City of Bremen, in Europe, and has maintained agents in charge of said agencies, but it denies that it has by means of, through or by said agents solicited persons to travel to and from Europe upon its said steamships otherwise than is expressly permitted by the laws of the United States and especially those laws which regulate the immigration of aliens into the United States; and it admits that in the case of all such passengers transported to the United States from said European port it has docked its steamships and landed said passengers at either the port of New York or Baltimore or Gal-

veston, and in case of such passengers transported to Europe they have embarked upon its steamships at one or the other of said ports.

And said defendant further admits that the defendants, Gustav H. Schwab, Herman C. Von Post and Gustav Schwab, Junior, called in said petition Gustav H. Schwab, Junior, are residents of the State of New York, and of the Southern District of New York, and that the said Gustav H. Schwab, Herman C. Von Post and Gustav Schwab, Junior, are residents of the City and County of New York, and that said three defendants are partners doing business under the firm name and style of Oelrichs & Co., with an office and place of business at No. 5 Broadway, New York City. That ever since the 1st day of January, 1909, said three defendants have, and on and prior to said first day of January, 1909, said Gustav H. Schwab and Herman C. Von Post for many years constituted said firm of Oelrichs & Co., and were, and said three defendants are, the general agents in the United States of the North German Lloyd line and in general charge of its affairs within the United States, and held and hold themselves and their office out to the public as the persons with whom and the place where business may be transacted with the North German Lloyd line except that the said Herman C. Von Post has not within ten years last past taken any active part in said business although still nominally a member of said firm and said Gustav H. Schwab has been absent from the City of New York and taken no active part in said business since March 7th, 1910.

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And this defendant further answering said petition admits that the steamship lines mentioned in said petition are to some extent natural competitors in the business of furnishing facilities for the aforesaid steerage passenger traffic, and it admits and alleges that they are now actively competing with each other

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and with all others in said business in furnishing such facilities, but it denies the existence of the unlawful combination and conspiracy mentioned in the second article of said petition.

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THIRD: The said defendant further answering said petition admits that the influx of population from all parts of Europe to the United States has increased from time to time with some fluctuations, and that said traffic back and forth has become large, but it denies that said traffic is or ever has been very lucrative to the steamships engaged therein. It admits that with the increase of this traffic the steamship companies, as the result of a most active competition between them, have extended their facilities for handling it, but it denies that the income from third-class or steerage rates to Europe and North America is one of the most important parts of their revenue. This defendant is ignorant with regard to the accuracy of the averments contained in the third article of said petition as to the average number of third-class or steerage passengers arriving in and departing from the United States, during the last five years, and leaves the petitioner to make such proof thereof as it shall be advised and also with regard to the amount of revenue collected by said steamship companies therefrom, and in regard to the amount of money expended in the United States by immigrants in the purchase of tickets for relatives in Europe to enable them to come to America.

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FOURTH: This defendant denies that it has been and upon information and belief that the other defendant corporations named in the petition, or any of them, have been at any time or are now engaged in the United States or in the Southern District of New York, in any unlawful combination or conspiracy to restrain a part of the trade and commerce of

the United States with foreign nations, or to monopolize the same or in a combination and conspiracy to destroy all competition among and between themselves in the business of transporting third-class or steerage passengers by steamships between ports in the United States of America and ports in Europe, or in eliminating, suppressing and destroying all competition in such traffic by any and all persons and corporations other than themselves either in the manner set forth in said petition or otherwise.

FIFTH: This defendant admits upon information and belief that on or about the 5th day of February, 1908, at the City of London in England, the corporations named in the fifth article of said petition entered into an agreement in writing, a copy of which believed to be correct, is annexed to the petition and marked "Exhibit A," and that thereby each of the corporations named as defendant in said petition other than the Russian-East Asiatic Steamship Company, Limited, became a member of a voluntary association under the name and style of the "Atlantic Conference," and that said association was by said agreement to maintain an office with a person in charge thereof who should be and is designated and described as Secretary; and the defendant admits on information and belief that the terms of said agreement are with substantial correctness set forth in the division marked "A" in the fifth article of the petition, but this defendant craves leave to refer to the original or a proved copy thereof when produced in Court for greater certainty in respect to the terms thereof.

SIXTH: This defendant has no knowledge whether the said Russian-East Asiatic Steamship Company, known as the Russian-American Line, was, at or about the time alleged in the petition, duly admitted to membership in said Atlantic Conference and to all

the benefits of the provisions of said contract, but this defendant denies on information and belief that the share or shares of the other lines, parties to the said contract, were in any respect altered so as to provide a percentage of such traffic by the said Russian-American Line, but the defendant admits that the steerage or third-class passenger business of said Russian-American Line was by agreement with the other members of said association regulated in some way the details of which are unknown to this defendant. And this defendant also admits that the provisions of said agreement of February 5th, 1908, were, at or about the time alleged in the petition, extended to remain effective and binding upon the contracting parties up to and including February 28th, 1911, and thereafter to remain effective and binding upon said parties from year to year, unless notice of intention to withdraw from the terms thereof at the end of any year be given by one or more of the parties thereto on or before the 1st day of December in the year in which such notice was given. But this defendant denies that said agreement was unlawful or in violation of the Act of Congress aforesaid of July 2nd, 1890, or of any amendment thereof or supplement thereto and this defendant alleges that said agreement was lawful and valid by the laws of England where it was executed and was also lawful and valid as an agreement respecting navigation and commerce on the sea by the laws of the United States and of the other countries to which the contracting parties to said agreement belonged and by the laws of Germany to which the steamships of this defendant belong.

SEVENTH: This defendant further answering admits, on information and belief, that since the adoption of the aforesaid contract the business of the said defendant steamship lines, parties thereto, and of said

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Russian-American Line since its said agreement with said other lines and so far as it became a party thereto, insofar as said business consists of the carriage of steerage traffic referred to therein, has been and at the date of the filing of said petition was carried on by each and every of the said corporate defendants in accordance with the terms and provisions thereof, and in accordance with the terms and provisions of resolutions adopted by said contracting parties at meetings held in pursuance thereof, but it denies that all free and natural competition between said lines in the establishment of rates and the furnishing of facilities for such steerage passengers have been and is thereby eliminated.

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EIGHTH: And the said defendant further answering said petition denies, on information and belief, that the successful accomplishment of the objects of said agreement necessarily involved the execution of the terms, scope and intent of said agreement throughout the United States or in the Southern District of New York, or that ever since February 5th, 1908, for the effective accomplishment of the objects of said agreement, each of the individual defendants herein has been or is designated and established by his respective line at his respective office in the United States as agent for such line to carry out and make effective the terms, objects and intent of said agreement in the United States, or that said individual defendants at their respective offices and agencies throughout the United States or in the Southern District of New York at the times mentioned in the petition have carried out and executed acts necessary for the successful accomplishment of the parties of said agreement. But this defendant admits that its said agents in the United States, and upon information and belief that the agents of the other lines in the United States, have

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from time to time received orders and instructions from their respective principals in Europe in respect to the sailing of their steamers respectively and in respect to rates of passage and other business of the line, and that they have complied with and carried out such orders and instructions, some of which orders and instructions may have related to acts required to be done by said principals under the terms of said agreement of February 5th, 1908.

NINTH: And this defendant denies upon information and belief that at a meeting held March 25th, 1908, or at any other time, the defendant steamship lines agreed that they should act together to eliminate and destroy the competition of any and all persons and corporations that might then or thereafter operate lines of steamships to carry steerage passengers between Europe and the United States in competition with all or any of defendant steamship lines in the traffic covered by the terms of the said agreement.

TENTH: This defendant further answering says, that at a meeting of the said defendant lines held at the City of London, in England, on or about the 25th day of May, 1908, in order to meet the low net rates which were then offered by a line of steamships, not party to the said agreement, operating between New York and the continent of Europe, it was agreed that one of the lines, parties to this agreement, should quote low rates in competition with said outside line, but this defendant alleges that said low rates so offered by the parties to said agreement have not generally been as low as the net rates offered by the outside line, nor have the net rates of any outside line been undercut, the advertised rates of outside lines being merely nominal and the actual net rates collected being greatly affected by large commissions allowed,



or pretended to be allowed, to their agents, and by the division of such commissions with the passengers, the rates of said defendants being subject only to the fixed commission of two dollars which their agents are forbidden to divide.

ELEVENTH. This defendant answering so much of the petition as relates to the use of what is called in said petition "fighting steamers" and to the alleged acts of the defendant steamship lines with reference to the Russian Volunteer Fleet, the Russian-American Line and the Northwestern Transport Line, denies that said matters are truly or correctly stated in said petition, and alleges on information and belief the facts in relation thereto to be as follows, and not otherwise:

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This defendant admits and alleges that for the purpose only of defending themselves against unfair competition on the part of persons or corporations other than defendant steamship lines, said defendant lines arranged for the use from time to time of steamers belonging to said lines, said arrangements being made by the defendants in Europe to be partially carried into effect by a committee representing them in the City of New York for some time after the execution of said contract but afterwards and down to the present time as this defendant is informed, carried out wholly by arrangements made by the defendants in Europe, whereby, in case and only in case a steamship was put up for the Atlantic service in competition with the steamships of the defendant steamship lines at such rates of passage as should necessarily involve the carriage of steerage passengers at a loss and at wholly unremunerative rates, with the obvious purpose of diverting said business from the steamships of the defendant steamship lines, a steamship belonging to some one of the defendant lines was selected for the pur-

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pose of meeting and preventing the intended effect of such unfair competition, which steamship so selected, being the same which is called in said petition a "fighting steamer," but which this defendant prefers to call, and with greater truth, a "defending steamer," was selected to meet such competition and the defendant admits that in such case the rate of passage advertised for such defending steamer was less than the ordinary rates of passage on the steamships of the defendant lines, but this defendant alleges that the said defendants have not generally reduced the net rate on said defending steamer to the net rate charged for said outside or attacking steamer, and have never undercut the same.

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And this defendant admits on information and belief that it was a part of said arrangement that where the said defending steamer secured more steerage passengers than it could lawfully carry the said defendant steamship lines, through said committee or otherwise, provided for carrying such excess at such reduced rate of said defendant steamer on some other of their steamships.

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The defendant also admits that some arrangement was made in Europe between the defendant steamship lines for compensation to the line whose steamers were so selected as defending steamers or for the carriage of such excess for the loss sustained by such line in the difference between its regular steerage rate and the rate charged upon said defending steamer or other steamer taking such excess of passengers, but whether the arrangement for such compensation was made in pursuance of the resolution referred to in the petition this defendant is not informed and leaves the petitioner to make such proof thereof as it shall be advised.

And this defendant admits on information and belief that this system of meeting the competition of

outside persons or corporations was adopted and carried into effect with reference to steamships put in competition with those of the defendant lines or some of them, by the Russian Volunteer Fleet and the Russian-American Line before the latter line made some agreement as hereinbefore stated with said other defendant lines.

This defendant admits and alleges that in or about the month of June, 1908, there was competition between the steamships of the Russian Volunteer Fleet and the steamships of some of the defendant steamship lines, the Russian Volunteer Fleet running its steamers between New York and Libau and touching at Rotterdam, but the defendant denies on information and belief that at that time or afterwards the defendant lines or any committee of said lines selected a steamer to run between the port of New York and the port of Libau.

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And this defendant denies on information and belief that in any such competition the net rate of passage charged on the steamer of the defendant lines was ever put at a sum below the net rate charged by the Russian Volunteer Fleet, and it alleges that such net rate so charged on the defendant lines was generally above the net rate charged by the Russian Volunteer Fleet.

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And this defendant admits on information and belief that the rates which the said defendants were thus obliged to charge to meet the competition of said Russian Volunteer Fleet were in every such instance so low that neither the Russian Volunteer Fleet nor any other steamship company could possibly make the same profitable or remunerative; and this defendant is ignorant as to the amount of financial loss, if any, which said Russian Volunteer Fleet incurred in the conduct of its third class or steerage traffic, and leaves the petitioner to make such proof thereof as it shall be advised if the same is material.

And this defendant admits that in or about the month of July, 1908, the said Russian Volunteer Fleet withdrew its steamships from said service between the ports of New York and Libau via Rotterdam, and has never since operated said line, but this defendant denies that said action was any detriment or loss to the public or to persons desiring to procure third-class or steerage transportation between New York and Russia.

And this defendant alleges that since the 1st of January, 1908, up to the time of such withdrawal, the third-class travel from Europe to the United States has been vastly less than in any previous year since about 1898.

And the defendant denies that the Russian Volunteer Fleet was driven out of business by the acts of the defendant steamship lines or any of them.

And this defendant denies that the ships of the Russian Volunteer Fleet were suitable for the trade between Libau and New York via Rotterdam, and alleges that said ships were built for an entirely different trade and were not suitable or well adapted to the Atlantic service.

This defendant on information and belief further alleges that said Russian Volunteer Fleet upon the withdrawal of its steamers was in some way merged with the Russian-American Line, the particulars of which merger are unknown to the defendant, and that the said Russian-American Line continued for a time thereafter as it had before a similar unfair system of competition with some of the steamships of the other defendant lines.

And this defendant further answering alleges that from the month of March to the month of September, inclusive, in the year 1908, the said Russian-American Line carried on with its steamships a similar unfair competition with some of the steamships of the other

defendant lines and that the defendants met said competition in the manner hereinbefore stated with regard to the competition of the Russian Volunteer Fleet; but this defendant denies that at any time the net rates charged upon the defending steamships of the defendant steamship lines were less than or generally as low as the net rates so charged upon the steamers of the said Russian-American Line.

And the defendant admits and alleges that the rates charged upon the steamships of said Russian-American Line as well as upon the said defending steamers of the other defendant lines were so low that neither the Russian-American Line nor any other line could make said business profitable or remunerative, and the defendant is ignorant to what extent, if at all, the Russian-American Line incurred financial loss in the conduct of its third-class or steerage passenger traffic thereby and it leaves the petitioner to make such proof thereof as it shall be advised.

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And this defendant further answering admits that in or about September, 1908, some arrangement was made between said Russian-American Line and the other defendant lines under which or in consequence of which its said business was carried on and has since been carried on in harmony with the other defendant steamship lines, but this defendant denies that either the said Russian-American Line or either of the other defendant lines had in said business or in said transactions been guilty of any unlawful or wrongful act whether alleged in said petition or otherwise or became parties of any unlawful contract, combination or conspiracy or that the people of the United States have suffered any loss or detriment thereby.

417

This defendant further admits that at the time alleged in the petition about April 1st, 1909, the party or person or persons calling themselves the Uranium Steamship Company, Limited, whether incorporated

under the laws of Great Britain or otherwise, this defendant is ignorant, began to operate and has since operated a line of steamships under the name of New York and Continental Line, afterwards called the Northwest Transport Line, between New York and Rotterdam, carrying third-class or steerage passengers; that said business has been in competition with similar business on the part of some of the defendant lines; that the rates at which said Uranium Steamship Company, Limited, advertised to carry such passengers were below a fair and reasonable rate for the service offered.

419

This defendant further answering admits that this competition was met by the defendant lines in the same manner in which they had met the competition instituted by the Russian Volunteer Fleet and the Russian-American Line as hereinbefore described, and it denies that in any case the net rate charged on the defending steamer in such case was less than or generally as low as that charged by said Uranium Steamship Company for its steamers or that the defendants cut said rates as alleged in said petition.

420

And this defendant further denies that any such cut rates for such defending steamers or as they are called in the petition "fighting steamers" are now or have since March 1910 been put in force by notices sent out by the individual defendants to the agents throughout the United States for the sale of tickets for third class steerage transportation on the defendant lines or otherwise.

And this defendant further answering alleges that the measures taken by the defendant lines for the purpose of meeting the unfair competition of said Northwest Transport Line has not been for the purpose of excluding said line from a participation in said traffic or for effectuating the restraint or monopoly of said traffic or that said Northwest Trans-

port Line has thereby at any time been prevented from obtaining a fair and reasonable share of said traffic or has been forced to carry such of it as it has secured at a financial loss, and that said measures have had for their purpose only the defense of the business of the defendant lines from an unfair attack upon them by the said Northwest Transport Line using its steamships in an attempt by an unfair and ruinous competition to divert said business or some part of it from said defendant steamship lines or some of them.

And this defendant further answering alleges that it has not in any of the measures taken to meet the competition of said Russian Volunteer Fleet, Russian-American Line or said Northwest Transport Line, been guilty of any unfair or unlawful competition, but that by the measures so taken by it, it has only met unfair and unreasonable and ruinous competition by lawful and proper methods of defense.

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TWELFTH: And this defendant further answering denies on information and belief that the defendant steamship lines have agreed in pursuance of any unlawful combination or conspiracy that no one of them shall continue in its employ as agent for the sale of ticket over its line, any person who shall act as agent for the sale of third-class or steerage tickets over any independent line in competition with said defendants' lines or that measures provided for thereunder are employed by this defendant or the other defendant lines within the United States or in the Southern District of New York for or on behalf of this defendant or of said other defendants or as a part of any illegal or oppressive attack upon the said Northwest Transport Company, but this defendant alleges that long before said agreement of February 5th, 1908, was made, an agreement was made be-

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tween some or all of the defendant lines and others that no one of the lines making such agreement would employ as agent for the sale of tickets over its line, any person who should act for the sale of tickets over any line other than the lines who were parties to said agreement; that this arrangement was made in self defense and by reason of frauds theretofore perpetrated by ticket agents employed by the lines who were parties to such agreement in betraying the interest of their principals by cutting rates and diverting business from the Lines so employing them and deceiving and defrauding persons applying to them for passage and committing other frauds not only upon their principals but upon the traveling public; that said agreement so made was a perfectly valid and lawful agreement and was not in itself nor constituted any part of any agreement in restraint of trade or in violation of the provisions of said act of July 2, 1890, or any act in amendment of or supplemental thereto; that it has been uniformly so far as this defendant has any knowledge, acted upon by all well conducted Steamship Lines and has contributed largely to the benefit of the public and to the honest conduct of such steerage business as carried on by said defendant lines.

And this defendant further answering, denies that this defendant or said other defendant lines have arbitrarily fixed their rates for steerage transportation so as to bring about the arbitrary division of traffic as alleged in said petition or to maintain rates at an artificial level or to yield the highest net return to them, or that by any such action in fixing said rates, this defendant or the defendant lines have deprived or are depriving the public of the benefit of the normal division of traffic between persons and corporations engaged in such traffic according to the needs and convenience of the public, or that the rates



charged in said traffic by this defendant or by said other defendant lines have ever been in any respect excessive or unreasonable. On the contrary thereof, this defendant alleges that the rates charged in said steerage business by this defendant and by said other defendants since said agreement of February 5th, 1908, went into effect, have in all cases, been reasonable and no more than a fair equivalent for the services rendered and the accommodations furnished to travelers upon their steamships, that the defendant Steamship Lines do not by the operation under said agreement, or otherwise, fix or agree upon rates, and that the distribution of the said business among them thereby, is not abnormal or unnatural, but as a reasonable arrangement for the stability and convenient conduct of said business, and is greatly for the benefit of the people of the United States.

428

THIRTEENTH: And this defendant further answering, denies that by the said contract or any practices thereunder described in said petition or otherwise, the said defendant steamship lines have obtained or attempted to obtain a virtual monopoly of any part of the commerce of the United States with foreign nations. It admits upon information and belief, that a large part, but what percentage is unknown to defendant, of the total third-class or steerage passenger traffic between Europe and North America is now carried in the ships belonging to the defendant steamship lines, but defendant denies that 75% or any part of said total steerage passenger traffic is regulated, limited and restrained by means of said contract.

429

FOURTEENTH: And this defendant further answering said petition, alleges that steerage or third-class passengers traveling between the United States and the countries to which the ships of defendants' lines sail, have never had better and safer transportation

and accommodations at less cost than have been furnished by the defendant lines since the agreement of February 5th, 1908, was entered into, that the rates of steerage passage have not since that time been increased over such rates prior thereto, sufficiently to compensate the owners of the ships for the diminution in the purchasing power of money or for the increased facilities and accommodations offered by them or the increased cost of operation; that since said contract was made, competition between the parties to said contract has been active in increasing the size of their ships and improving the conditions of the service; that this competition has been more active than at any previous time and the effect of it has been constantly to increase and improve the accommodations offered to steerage passengers; that the abrogation or annulment of the contract of February 5th, 1908, would lead to rate wars, destructive competition in the steerage business between the defendant lines and other parties who are free to enter upon said business; that such competition and rate wars would make it impossible to furnish such steerage or third-class passengers the accommodations and service which they now receive, and would be a great detriment to the public; that the effect of such rate war or competition would be the driving out of business many of the weaker lines, and tend to create a monopoly of the business in a very few of the strongest lines, those having greater capital and ability to continue in said business in spite of said ruinous competition; that prior to the making of this contract, there were periods of such destructive competition, actually driving out of business several steamship companies which had long operated between Europe and the port of New York, carrying steerage passengers.

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FIFTEENTH: And this defendant further answering, says that in the absence of international agreement or treaty between the United States and the countries to which said ships belong, there is and can be no regulating authority which can authorize the establishment and maintenance of reasonable, stable and equitable rates of passage in said traffic, otherwise than by fair and reasonable agreement in relation thereto by and among the persons or corporations engaged therein, and that to maintain their services to the public on a permanent basis and with security and comfort to their passengers, this defendant and the other defendant lines, parties to the said contract of February 5th, 1908, have been compelled to contract with one another, as was done in said contract, for the reasonable regulation of said traffic, and that the making of said agreement and the acts of the defendants under it have at all times been, and now are, a benefit to the people of the United States and in accordance with the policy of the United States in respect to the carriage of passengers on the sea and particularly in respect to the immigration of aliens to the United States, and that said agreement is not in undue restraint of trade or commerce, but is a valid contract, and so far as it affects the foreign commerce of the United States, is a valid and reasonable regulation thereof, and not a violation of said Act of July 2, 1890, or any amendment of, or supplement thereto, and that said business has not resulted in more than a just and reasonable compensation to this defendant or to the other defendant lines for the expense incurred and the service rendered by them in the carriage of passengers.

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Wherefore, this defendant avers that the said agreement of February 5th, 1908, is not, and does not, create or tend to create an undue, unreasonable or un-

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*Answer of Norddeutscher Lloyd, et al.*

lawful restraint of trade or commerce, nor a monopoly or attempt at monopoly of any part of said commerce.

437

This defendant having answered fully, the petition herein, denies all and all manner of unlawful contract, combination, conspiracy, monopoly, or attempt or intent to monopolize, and all and all manner of misdoing of every kind wherewith it is or intended to be by the said petition charged, without this, that there is any other matter, cause or thing in said petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true to the knowledge or belief of this defendant; all of which matters and things, this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

438

WITNESS, the seal hereto affixed which is adopted for the purpose as the corporate seal of said corporation, there being no such corporate seal within the United States, and said seal being so affixed by the general agents of said corporation within the United States.

NORDDEUTSCHER LLOYD,  
by Oelrichs & Co., (L. S.)  
its general agents.  
GUSTAV H. SCHWAB,  
H. C. VON POST,  
GUSTAV SCHWAB, JR.

CHOATE & LAROCQUE,  
Solicitors for Defendant, Norddeutscher  
Lloyd.  
WM. G. CHOATE,  
Of Counsel.

**Answer of the Allan Line Steamship Company, Limited.** 439

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK, IN THE SECOND CIRCUIT.

THE UNITED STATES OF AMERICA,	} In Equity.	440
Petitioner,		
against		
HAMBURG - AMERIKANISCHE PACKET - FAHRT - ACTIEN GESELLSCHAFT, and others, Defendants.		

The separate answer of the defendant The Allan Line Steamship Company, Limited, to the Petition of the United States of America, filed herein on January 4th, 1911.

This defendant, answering unto so much and such parts of said Petition as it is advised it is material and necessary for it to make answer unto, says:

1. Answering Part I of the Petition, this defendant admits that the defendant steamship lines herein, except the Canadian Pacific Railway Company, are engaged in foreign trade and commerce as common carriers of passengers and freight, including third-class, or steerage passengers, between ports in the United States and ports in Europe, but it denies that it is engaged as a common carrier of passengers and freight between inland points in the United States and ports or inland points in Europe, Asia and Africa, and it denies upon information and belief that any of the other defendant steamship lines except the Canadian 441

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Pacific Railway Company is so engaged. In regard to the Canadian Pacific Railway Company, this defendant believes that said Company is not engaged as a common carrier of passengers and freight between ports in the United States and ports in Europe, and therefore denies that this is the fact, but this defendant has no information, knowledge or belief as to whether said Canadian Pacific Railway Company is engaged as a common carrier of passengers and freight, including third-class or steerage passengers, between inland points in the United States and ports and inland points in Europe, Asia and Africa. This defendant denies that in respect to said commerce in which it is engaged, or otherwise, it is violating, or ever has violated, in any way, any of the provisions of the Act of the Congress of the United States entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," approved July 2nd, 1890, and upon information and belief, it makes the same denial as regards the other defendant steamship lines.

2. Answering Part II of the Petition, it admits the allegations contained in paragraph 1.

444      Answering paragraph 2, it admits that the defendant Bryce J. Allan is a resident of the State of Massachusetts, and is and for many years has been, engaged in business under the firm name and style of H. & A. Allan, with an office and place of business at the City of Boston, in the State of Massachusetts. It denies that the said Bryce J. Allan has been or now is employed by and acting for the Allan Line in the capacity of general agent and manager of its business in the United States, or has had, or now has, charge of the affairs in the United States, of the Allan Line in connection with its business; but it admits and says that the said Bryce J. Allan is the manager of its business in Massachusetts, and represents himself and his said

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office, respectively, to be the person with whom and the place at which business may be transacted with the Allan Line in Massachusetts.

It denies each and every allegation contained in paragraph 24, except that it admits that some of the defendant steamship lines are in some respects natural competitors.

Upon information and belief, generally, but without information as to many of such allegations concerning the others defendants, it admits the allegations contained in paragraphs numbered 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23.

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3. Answering Part III of the Petition, this defendant admits that the steerage traffic to and from Europe has been large, that the steamship companies engaged in carrying such traffic have extended their facilities for handling the same, and that the income from that description of traffic is an important part of their revenue, and except as to the allegations so admitted, this defendant says that it has no knowledge, information or belief in regard to the allegations contained in said Part "III" of the petition.

4. Answering Part IV of the Petition, this defendant denies each and every allegation contained in said Part IV of the petition, in so far as the same applies to it, and upon information and belief, it denies each and every allegation therein contained in so far as the same applies to the other defendants.

447

5. Answering paragraph 1 of Subdivision A of Part V of the petition, this defendant admits that on or about February 5th, 1908, at the City of London, England, it entered into an agreement with the other defendant steamship lines, a copy of which agreement is annexed to the petition and marked "Exhibit A." It believes such copy to be substantially correct, but



448      *Answer of The Allan Line Steamship Co., Ltd.*

for greater certainty craves leave to refer to the original thereof when the same shall be produced. This defendant denies that in becoming a party to said agreement, it entered into any unlawful combination or conspiracy, or into any conspiracy whatever, or that said agreement was or is unlawful. This defendant says that said agreement was and is lawful under the laws of England where it was made, and under the laws of Great Britain which govern this defendant and its steamships, and that it does not and never did violate the laws of the United States.

449      6. This defendant admits the allegations contained in paragraphs numbered 2, 3, 4, 5, 6, 7, 8 and 9, of Subdivision A of Part V of the petition, in so far as they set forth the provisions of said agreement dated February 5th, 1908, but it denies the allegations contained in the petition in regard to the meaning, legal effect and intent of said agreement, and for greater certainty craves leave to refer to the original of said agreement when the same shall be produced.

450      7. Answering Subdivision B of Part V of the petition, this defendant admits that at about the time mentioned in the petition the Russian-American Line was admitted to membership in the Atlantic Conference and to the provisions of said contracts, and that the shares of the lines parties to said contract were in some respects altered so as to provide a percentage of said steerage traffic for the Russian-American Line. It admits that by the terms of said contract of February 5th, 1908, the same was to remain effective up to and including February 28th, 1911, and thereafter, from year to year, unless notice of intention to withdraw therefrom at the end of any year should be given by one or more of the parties thereto on or before the first day of December of the year in which such notice should be given, as in said contract provided.



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8. Answering paragraph 1 of Subdivision C of Part V of the petition, this defendant admits, on information and belief, that since the adoption of the aforesaid contract, the business of the said defendant steamship lines, in so far as it consists of the steerage traffic referred to therein and in so far as said contract applies thereto, has been and at the date of filing the petition was carried on by the defendant steamship lines in accordance with the terms and provisions thereof, and in accordance with the terms and provisions of resolutions adopted by said contracting parties at meetings held in pursuance thereof. 452  
but it denies that all free and natural competition between said lines in the establishment of rates and the furnishing of facilities for such steerage traffic has been or is thereby eliminated, and it denies that said contract ever was or is unlawful.

9. Answering paragraph 2 of Subdivision C of Part V of the petition, this defendant denies, on information and belief that the successful accomplishment of the objects of said agreement necessarily involved the execution of the terms, scope and intent of said agreement throughout the United States, or in the Southern District of New York, or that ever since February 5, 1908, for the effective accomplishment of the objects of said agreement, each of the individual defendants herein has been or is designated and established by his respective line at his respective office in the United States, as agent for such line, to carry out and make effective the terms, objects and intent of said agreement in the United States, or that said individual defendants, at their respective offices and agencies throughout the United States, or in the Southern District of New York, at the times mentioned in the petition, have carried out and executed acts necessary for the successful accomplishment of the 453

454      *Answer of The Allan Line Steamship Co., Ltd.*

purposes of the parties to said agreement. It denies that said agreement was or is unlawful or that it was entered into in pursuance of any unlawful combination or conspiracy.

10. Answering the first sentence of paragraph 3 of Subdivision C of Part V of the petition, this defendant denies each and every allegation contained therein, except that it admits that its agents in the United States and, upon information and belief, that the agents of the other defendant lines in the United States, have from time to time received orders and instructions from their respective principals in Europe, in respect to the sailing of their steamers and in respect to rates of passage and other business of their lines respectively, and that they have complied with and carried out such orders and instructions.

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11. This defendant denies each and every allegation of that portion of Subdivision C of Part V of the petition entitled "Agreement to Destroy Competition of Independent Lines."

12. Further answering, this defendant says that in order to meet low rates, then offered by a line of steamships not a party to said contract of February 5, 1908, operating between New York and the Continent of Europe, the said defendant lines agreed, at a meeting held at the City of London, in England, on or about May 25th, 1908, that one of such lines should, when necessary, quote low rates in competition with the rates of said outside line.

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13. Answering that portion of Subdivision C of Part V of the petition entitled "Arrangement to use so-called 'fighting steamers' to destroy competition," this defendant denies that the facts are correctly stated in the petition and alleges the facts to be as follows:

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It admits and says that in pursuance of said agreement of May 25th, 1908, and for the purpose of defending themselves against competition by steamship lines other than the defendant lines, said defendant lines arranged for the use from time to time of steamers belonging to them, so that in case and only in case a steamship belonging to a line not a party to said contract of February 5, 1908, should be scheduled to sail eastbound from the port of New York to a European port and should offer unremunerative steerage rates necessarily involving the carriage of steerage passengers at a loss, for the obvious purpose of diverting steerage business from the steamships of the defendant lines, a steamship belonging to one of the defendant lines would be selected to sail from the port of New York at about the same time and to carry steerage passengers at rates lower than the ordinary steerage rates on the steamships of the defendant lines, for the purpose of meeting and preventing the intended effect of such competition. Said arrangements with regard to the so-called "fighting steamers" were made by the defendant steamship companies in Europe, and, so long as this defendant was a party thereto, were partly carried into effect by a committee representing them in the City of New York. This defendant denies that so long as it was a party to said arrangements the steerage rates on any steamer so selected by the defendant lines were ever reduced lower than was necessary to meet such competition and to prevent the defendant lines from being deprived of their share of the steerage traffic from New York to European ports. It admits that so long as it was a party to such arrangements whenever any so-called "fighting steamer" secured more steerage passengers than it could lawfully carry, the defendant steamship lines through said committee or otherwise arranged for carrying such excess passengers at the

460      *Answer of The Allan Line Steamship Co., Ltd.*

advertised steerage rates of such "fighting steamer" on some other of their steamships and that the line or lines carry such excess steerage passengers at such reduced rates was or were compensated by the other defendant steamship lines by payments amounting for each passenger so carried to the difference between the regular advertised steerage rate of such line and such reduced rate.

461      This defendant says that on December 16, 1908, it gave due notice of its intention to withdraw from participation in said arrangement to use so-called "fighting steamers" and on January 17, 1908, it did duly withdraw therefrom and since then it has not had and it has not now any connection with or participation in said arrangement or any obligation thereunder.

462      14. Answering that portion of Subdivision C of Part V of the Petition entitled "Competitors are crushed" this defendant admits on information and belief that the method hereinabove described of meeting the competition of lines not parties to the Atlantic Conference was employed to meet the competition of steamships of the Russian Volunteer Fleet and of the Russian-American Line operating and carrying steerage passengers between the port of New York and the port of Libau in Russia. It denies that said method was employed to suppress the competition of said last mentioned lines or that such competition was crushed thereby, but it says that said method was employed solely to protect the lawful business of the defendant lines and not to effect the objects of any unlawful contract, combination or conspiracy whatever.

15. The defendant denies each and every allegation contained in the paragraph of subdivision C of Part V of the petition entitled "The Russian Volunteer Fleet is Driven out of Business," except that it admits on information and belief that from March to June,

1908, the said Russian Volunteer Fleet frequently advertised its steamships to sail from the port of New York to the port of Libau in Russia, and advertised for and solicited persons to sail as third class or steerage passengers on such ships, and that when such ships were so advertised to sail, said defendant lines selected a steamer and advertised the same to sail from the port of New York on or about the day that the ship of the Russian Volunteer Fleet was so advertised to sail and advertised a rate for steerage passengers on such steamer lower than the regular steerage rates of the defendant lines and low enough but not lower than necessary to meet the competition of said ship of the Russian Volunteer Fleet, and except that it admits that in the month of July, 1908, or shortly prior thereto, said Russian Volunteer Fleet withdrew its steamships from such service, and has ever since ceased to operate said line. This defendant says that the steerage rates charged on said ships of the Russian Volunteer Fleet and on the steamers so selected by the defendant lines to meet their competition were so low that neither the Russian Volunteer Fleet nor any other line could derive any profit therefrom and that the business done at such rates resulted in loss.

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16. This defendant says that in the year 1908 the business of transporting steerage passengers between the United States and Europe was greatly depressed. Upon information and belief, it says that the Russian Volunteer Fleet was in that year making low steerage rates, west and east bound, in order to create traffic, but the movement of steerage passengers was so light that its voyages were conducted at a loss, as was also the case in that year with the voyages of the ships of the defendant lines. Upon information and belief, this defendant says that the withdrawal of the Russian Volunteer Fleet was occasioned partly by the small volume of traffic and partly by the entrance of

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466      *Answer of The Allan Line Steamship Co., Ltd.*

the Russian American Line as a competitor into the trade between Libau and New York, and by losses of the Russian Volunteer Fleet in no way due to any act or acts of the defendant lines or of any thereof.

17. Upon information and belief, this defendant says that when the Russian Volunteer Fleet withdrew, the Russian American Line took over and assumed its contracts for the carriage of steerage passengers under an arrangement between it and the Russian Volunteer Fleet, of the terms of which this defendant has no knowledge.

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18. This defendant believes, and therefore says that the withdrawal of the ships of the Russian Volunteer Fleet from the service between New York and Libau caused no detriment or loss to the public or to persons desiring to procure steerage transportation between New York and Libau.

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19. Answering that portion of subdivision C of Part V. of the Petition entitled "The Russian American Line is driven out of competition and forced into the unlawful combination and conspiracy," this defendant admits and says on information and belief that from the month of March until the month of September, 1908, the Russian American Line was engaged in operating its line of steamships from the port of New York to the port of Libau, in Russia, and carried thereon third class or steerage passengers, and that frequently during said period, it advertised its steamships to sail from said port of New York, and advertised for and solicited persons to travel upon its ships as third class or steerage passengers, and that in each such instance the defendant lines selected a steamer and advertised the same to sail at or about the same time as the ship of the Russian American Line, and advertised a rate for steerage passengers on such steamer lower than the regular steerage rates

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of the defendant lines and low enough but not lower than necessary to meet the competition of said ship of the Russian American Line. This defendant says that the steerage rates charged on said ships of the Russian American Line and on the steamers so selected by the defendant lines to meet their competition were so low that neither the Russian American-Line, nor any other line could derive any profit therefrom and that the business done at such rates resulted in loss.

It admits that at about the time mentioned in the petition the Russian American-Line became a party to the Atlantic Conference and has since carried on its business under said contract dated Feb. 5, 1908, in so far as the same applies thereto. It denies any unfair or unlawful competition by the defendant lines with the Russian-American Line. By reason of the unremunerative rates charged this defendant believes that the Russian-American Line incurred financial loss in the conduct of its steerage traffic, but denies that the Russian-American Line sought admission to the Atlantic Conference in order to be permitted to continue in said business; or that since its admission to said Conference it has been conducting its said business free from competition with the other defendant lines. It denies that the Atlantic Conference is an unlawful combination or conspiracy, or that the contract of February 5, 1908, was or is unlawful, or that the people of the United States have suffered any loss or detriment therefrom or from any act of any of the defendants thereunder.

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20. Answering that portion of Subdivision C. of Part V. of the Petition entitled "Unfair competition against the Uranium Steamship Company," this defendant denies that it has any knowledge or information sufficient to form a belief as to each and every allegation thereof except that it denies on information and belief that the defendant steamship lines have



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agreed in pursuance of any unlawful combination or conspiracy that no one of them shall continue in its employ as agent for the sale of tickets over its line any person who shall act as agent for the sale of third-class or steerage tickets over any independent line in competition with said defendant lines or that measures provided for thereunder are employed by the individual defendants within the United States or in the Southern District of New York on behalf of the defendant lines as a part of any illegal attack upon said North West Transport Line. This defendant says

473      that long before said contract of February 5, 1908 was made, an agreement was entered into between some or all of the defendant lines and others that no one of the lines so agreeing would employ as agent for the sale of tickets over its line any person who should act for the sale of tickets over any line other than the line so agreeing; that this agreement was made in self defense to guard against frauds by ticket agents in sacrificing the interests of their principals by cutting rates and diverting business from the lines employing them by deceiving and defrauding persons to whom they sold tickets, and by committing other

474      frauds upon the traveling public as well as upon their principals; that said agreement was and is valid and lawful and has promoted the public convenience and the honest conduct of the transatlantic steerage business.

21. This defendant denies each and every allegation contained in that portion of Subdivision C of Part V. of the Petition entitled "Excessive and arbitrary rates are charged by defendants for steerage transportation."

22. Answering that paragraph of subdivision C of Part V. of the Petition entitled "Penal enforcement of the terms of the unlawful contract," this defend-



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ant denies that since the adoption of the contract of February 5th, 1908, any of the parties thereto has been subjected to any duress or constraint in conducting its steerage business, and refers to the terms of said contract for the particulars thereof.

23. Answering Part VI. of the Petition this defendant denies that the defendant steamship lines have obtained or attempted to obtain a virtual or any monopoly of any part of the traffic of transporting steerage passengers in trade and commerce between the United States and foreign nations, and it denies that said contract was or is unlawful, or that it was or is a party to any unlawful contract, combination or conspiracy, or to any conspiracy whatever. It says that it has no knowledge or information sufficient to form a belief as to what per cent of the total third-class or steerage passenger traffic between Europe and North America was carried in ships belonging to the defendant steamship lines at the date of the filing of the Petition herein.

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24. Further answering this defendant says that the act of Congress of the United States of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies" does not apply to the business of transporting passengers upon the ocean between ports of the United States and ports of Europe. But it says that even if said acts should be held to apply to such business said agreement among the defendant steamship lines of February 5, 1908, does not come within the prohibitions thereof because said agreement is not an agreement in restraint of trade or commerce with foreign nations and the effect thereof is not to monopolize or to attempt to monopolize any part of such trade or commerce. Said agreement is necessary for the protection and development of that portion of the trade and com-

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merce of the United States with foreign nations which consists in the transportation of steerage passengers between ports of the United States and European ports, and is a reasonable regulation thereof tending to promote and not to restrain the same.

25. This defendant further answering says that the practices of unscrupulous agents formerly caused great losses to the steamship companies operating between the United States and Europe, and great losses and hardships to persons travelling in the steerage. As long as there was wholly unregulated competition  
479 among the steamship lines and no understanding whatever among them, there were "general steamship agents" in New York City with agencies in the interior of the country, and the latter used to issue orders for tickets from New York to Europe on their connection in New York which did not mention any line or steamer and which the agent sold at a price which was acceptable to him. The agent in New York met purchasers of such orders on their arrival in New York, placed them in a boarding house which he either owned or controlled, where he extorted from them all the money he could get, while with the ticket orders in his pocket he went from steamship office to steamship  
480 office seeking the lowest rate at which he could get his passengers transported. The steamship lines fought these vicious methods in every possible way, and the desire to protect steerage passengers from extortion at the hands of unscrupulous agents and to put the business on a decent basis was one of the principal motives which led to the formation of the Atlantic Conference by said agreement of February 5, 1908, and of other Conferences which preceded it.

26. Further answering this defendant says that the history of the transatlantic steamship trade shows that unregulated competition has always led to disastrous

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rate wars, ruinous to the steamship companies and harmful to the public in that they deprived the public, of improvements in ships and service which the Companies, because of their losses, were unable to make. Another disadvantage to the public was the inability of weaker lines to endure the strain of such wars and the curtailment of service consequent upon their retirement. Prior to said contract of February 5, 1908, a number of important steamship lines which had long operated between Europe and the port of New York, carrying steerage passengers, were driven out of business by the effect of rate wars growing out of unregulated competition. In one of these rate wars steerage rates between New York and Europe went as low as \$10 per passenger, out of which sum agents received a commission of \$3, \$4, and even \$5. Only the strongest lines could survive such wars and even they made a precarious living as is shown by the long series of years in which transatlantic steamship lines did not pay any dividends to their stockholders. This defendant says that one of the main objects of said agreement of February 5, 1908, was to prevent the recurrence of such ruinous rate wars which in the past have been so harmful to the public as well as to the steamship companies. It avers that the effect of said agreement is not to destroy competition among the parties thereto, but only to regulate such competition reasonably so that all the steamship companies parties thereto may exercise a reasonable and beneficial control over the agencies for the sale of steerage tickets, and may charge fair, reasonable and stable rates, and thus be able to meet the constant public demand for better ships and better accommodations without substantial increase of rates, and so that the weaker lines may be able to live and compete for and retain fair shares of such steerage traffic.

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27. This defendant further answering says that the evils of unregulated competition among American roads have long been recognized and they have been practically done away with since the passage of the Interstate Commerce Act through the regulation exercised thereunder by the Interstate Commerce Commission. The injurious effects of rate wars among ocean carriers are, however, much greater than in the case of rate wars among railroads. The competition to which railroads are exposed is far less intense than that to which ocean carriers are exposed. In order to construct a railroad a very large capital must be provided, a franchise must be secured, a right of way obtained, and tracks must be laid. Every railroad has a substantial amount of local uncompetitive business which helps it to live through a rate war involving its competitive business. No franchise, on the other hand, is required to sail the high seas. All the business of an ocean steamship company is competitive. There are no limits to the potential competition. Any person with capital enough to assemble a few steamers may start a competition which may result in demoralizing the whole transatlantic carrying trade. The need of regulation is, therefore, much greater in the case of the transatlantic steamship companies than in the case of the railroads. It is an impressive fact that for many years with the knowledge of all departments of the government the railroads from New York to the west have apportioned among themselves the business of transporting immigrants from New York to their western destinations in accordance with an agreement similar to that among the defendant steamship lines which is attacked in the present suit. The Interstate Commerce Commission in 1904 investigated this so-called immigrant passenger pool of the railroads and decided that under the circumstances it was the best method of handling that

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class of traffic, not only for the railroads, but for the immigrants themselves. This permitted agreement among the railroads applies to the very same passengers which the defendant steamship lines carry under a similar agreement which the petitioner in this suit charges to be unlawful.

28. The transportation facilities and accommodations for steerage passengers have never been so good as since the formation of the Atlantic Conference under the agreement of February 5, 1908, and the competition of the different lines in providing larger and safer steamers with improved facilities and accommodations has never been so active as since the date of said agreement. For the purpose of maintaining and strengthening its position in the transatlantic business this defendant is now constructing two large new steamships at a cost of about \$2,000,000 each, which is about four times the cost of the best steamships it had in service a few years ago. Notwithstanding the great betterment of the accommodations provided and the great increase in the cost of steamers, the price for steerage transportation is very little more than the normal rate charged many years prior to the making of said agreement of February 5, 1908, although the accommodations now provided are greatly superior to those then furnished. The slight increase in the rate does not compensate the carriers for the decrease in the purchasing power of money which has taken place, nor for the cost of the improved facilities and accommodations now offered. Improvements of the kind now being made cannot be continued unless the steamship companies have some assurance that reasonably remunerative and stable rates can be maintained and that they will not be exposed to the hazards attendant upon the violent fluctuations of rates which always have accompanied wholly unregulated competition. Such assurance they

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can only obtain through some form of moderate and reasonable regulation such as is provided by said agreement of February 5, 1908.

491      29. This defendant further answering says that in the absence of an international agreement there is and can be no regulating authority between the United States and the countries to which the ships of the defendant steamship lines belong which can authorize the establishment and maintenance of reasonable, fair and stable rates for the transportation of steerage passengers except by fair and reasonable agreement in relation thereto by and among the persons or corporations engaged in such transportation, and therefore, in order to provide proper, safe and commodious service for the said steerage traffic this defendant and the other defendant lines, parties to said contract of February 5, 1908, have been compelled to agree with one another, as was done in said contract, for the reasonable regulation of said traffic. The transportation of steerage passengers since the date of said contract has not resulted in more than a just and reasonable compensation to this defendant or to the other defendant lines for the expense incurred and the service rendered by them in the carriage of such passengers.

492      30. This defendant denies each and every allegation contained in the petition and not hereinbefore specifically admitted. Having thus made full answer to all the matters and things contained in the petition, this defendant prays to be dismissed hence with its costs in this behalf incurred.

SPOONER & COTTON,

Solicitors for the Defendant the Allan  
Line Steamship Company, Limited.

JOHN C. SPOONER,  
JOSEPH P. COTTON, JR.,  
GEORGE RUBLEE,  
Of Counsel.

THE ALLAN LINE STEAMSHIP  
COMPANY, LIMITED,

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IN THE DISTRICT COURT OF THE UNITED  
STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK IN THE  
SECOND CIRCUIT.

<p>THE UNITED STATES OF AMERICA, Petitioner, against</p> <p>HAMBURG - AMERIKANISCHE PAC- KET-FAHRT-ACTIEN-GESELLSCH- AFT and others, Defendants.</p>	}	<p>In Equity.</p>	494
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The separate answer of the defendant the Hamburg-Amerikanische Packetfahrt-Actien-Gesellschaft to the petition of the United States of America, filed herein on January 4th, 1911.

This defendant answering unto so much and such parts of said petition as it is advised it is material and necessary for it to make answer unto, says:

1. Answering Part I of the petition this defendant admits that the defendant steamship lines herein, except the Canadian Pacific Railway Company, are engaged in foreign trade and commerce as common carriers of passengers and freight, including third-class, or steerage passengers, between ports in the United States and ports in Europe, but it denies that it is engaged as a common carrier of passengers and freight between inland points in the United States and ports or inland points in Europe, Asia or Africa, and on information and belief it denies that any of the other defendant steamship lines except the Canadian Pacific



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497 Railway Company is so engaged. In regard to the Canadian Pacific Railway Company, this defendant believes that said Company is not engaged as a common carrier of passengers and freight between ports in the United States and ports in Europe, and therefore denies that this is the fact, but this defendant has no information, knowledge or belief as to whether said Canadian Pacific Railway Company is engaged as a common carrier of passengers and freight, including third-class or steerage passengers, between inland points in the United States and ports and inland points in Europe, Asia and Africa. This defendant denies that in respect to said commerce in which it is engaged, or otherwise, it is violating, or ever has violated, in any way any of the provisions of the Act of the Congress of the United States entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," approved July 2nd, 1890, and upon information and belief it makes the same denial as regards the other defendant steamship lines.

2. Answering Part II of the petition it admits the allegations contained in paragraph 13.

498 It admits the allegations contained in paragraph 14, but it says that the term "resident director" as applied to the defendant Emil L. Boas is merely descriptive of his functions as general agent of this defendant in the United States. Said Emil L. Boas is not a member of the board of directors of this defendant and has no authority to represent this defendant outside of the United States.

It denies each and every allegation contained in paragraph 24, except that it admits that some of the defendant steamship lines are in some respects natural competitors.



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Upon information and belief generally, but without information as to many of such allegations concerning the other defendants, it admits the allegations contained in paragraphs numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22 and 23.

3. Answering Part III of the petition, this defendant admits that the steerage traffic to and from Europe has been large, that the steamship companies engaged in carrying such traffic have extended their facilities for handling the same, and that the income from that description of traffic is an important part of their revenue, and except as to the allegations so admitted this defendant says that it has no knowledge, information or belief in regard to the allegations contained in said Part "III" of the petition. 500

4. Answering Part IV of the petition this defendant denies each and every allegation contained in said Part IV of the petition, in so far as the same applies to it, and upon information and belief, it denies each and every allegation therein contained in so far as the same applies to the other defendants.

5. Answering paragraph 1 of Subdivision A of Part V of the petition, this defendant admits that on or about February 5th, 1908, at the City of London, England, it entered into an agreement with the other defendant steamship lines, a copy of which agreement is annexed to the petition and marked "Exhibit A." It believes such copy to be substantially correct, but for greater certainty craves leave to refer to the original thereof when the same shall be produced. This defendant denies that in becoming a party to said agreement it entered into any unlawful combination or conspiracy, or into any conspiracy whatever, or that said agreement was or is unlawful. This de- 501

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defendant says that said agreement was and is lawful under the laws of England where it was made, and under the laws of Germany which govern this defendant and its steamships, and that it does not and never did violate the laws of the United States.

503 6. This defendant admits the allegations contained in paragraphs numbered 2, 3, 4, 5, 6, 7, 8 and 9, of Subdivision A of Part V of the petition, in so far as they set forth the provisions of said agreement dated February 5th, 1908, but it denies the allegations contained in the petition in regard to the meaning, legal effect and intent of said agreement, and for greater certainty craves leave to refer to the original of said agreement when the same shall be produced.

7. Answering Subdivision B of Part V of the petition this defendant admits that at about the time mentioned in the petition the Russian-American Line was admitted to membership in the Atlantic Conference and to the provisions of said contracts, and that the shares of the lines parties to said contract were in some respects altered so as to provide a percentage of said steerage traffic for the Russian-American Line.

504 It admits that by the terms of said contract of February 5th, 1908, the same was to remain effective up to and including February 28th, 1911, and thereafter from year to year, unless notice of intention to withdraw therefrom at the end of any year should be given by one or more of the parties thereto on or before the first day of December of the year in which such notice should be given, as in said contract provided.

8. Answering paragraph 1 of Subdivision C of Part V of the Petition this defendant admits, on information and belief, that since the adoption of the afore-

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said contract, the business of the said defendant steamship lines, in so far as it consists of the carriage of the steerage traffic referred to therein and in so far as said contract applies thereto, has been and at the date of filing this petition was carried on by the defendant steamship lines in accordance with the terms and provisions thereof, and in accordance with the terms and provisions of resolutions adopted by said contracting parties at meetings held in pursuance thereof, but it denies that all free and natural competition between said lines in the establishment of rates and the furnishing of facilities for such steerage traffic has been or is thereby eliminated, and it denies that said contract ever was or is unlawful. 506

9. Answering paragraph 2 of Subdivision C of Part V of the Petition this defendant denies, on information and belief that the successful accomplishment of the objects of said agreement necessarily involved the execution of the terms, scope and intent of said agreement throughout the United States, or in the Southern District of New York, or that ever since February 5, 1908, for the effective accomplishment of the objects of said agreement, each of the individual defendants herein has been or is designated and established by his respective line at his respective office in the United States, as agent for such line, to carry out and make effective the terms, objects and intent of said agreement in the United States, or that said individual defendants, at their respective offices and agencies throughout the United States, or in the Southern District of New York, at the times mentioned in the Petition, have carried out and executed acts necessary for the successful accomplishment of the purposes of the parties to said agreement. It denies that said agreement was or is unlawful or that it was entered into in pursuance of any unlawful combination or conspiracy. 507

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10. Answering the first sentence of paragraph 3 of Subdivision C of Part V of the Petition, this defendant denies each and every allegation contained therein, except that it admits that its agents in the United States and, upon information and belief, that the agents of the other defendant lines in the United States, have from time to time received orders and instructions from their respective principals in Europe, in respect to the sailing of their steamers and in respect to rates of passage and other business of their lines respectively, and that they have complied with and carried out such orders and instructions.

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11. This defendant denies each and every allegation of that portion of subdivision of C of Part V of the Petition entitled "Agreement to Destroy Competition of Independent Lines."

12. Further answering, this defendant says that in order to meet low rates, then offered by a line of steamships not a party to said contract of February 5, 1908, operating between New York and the Continent of Europe, the said defendant lines agreed, at a meeting held at the City of London, in England, on or about May 25th, 1908, that one of such lines should, when necessary, quote low rates in competition with the rates of said outside line.

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13. Answering that portion of Subdivision C of Part V of the Petition entitled "Arrangement to use so-called 'fighting steamers' to destroy competition," this defendant denies that the facts are correctly stated in the Petition and alleges the facts to be as follows:

It admits and says that in pursuance of said agreement of May 25, 1908, and for the purpose of defending themselves against unfair competition by steamship lines other than the defendant lines, said defend-

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ant lines arranged for the use from time to time of steamers belonging to them, so that in case and only in case a steamship belonging to a line not a party to said contract of February 5, 1908, should be scheduled to sail eastbound from the port of New York to a European port and should offer unremunerative steerage rates necessarily involving the carriage of steerage passengers at a loss, for the obvious purpose of diverting steerage business from the steamships of the defendant lines, a steamship belonging to one of the defendant lines would be selected to sail from the port of New York at about the same time and to carry steerage passengers at rates lower than the ordinary steerage rates on the steamships of the defendant lines, for the purpose of meeting and preventing the intended effect of such unfair competition. Said arrangements with regard to the so-called "fighting steamers" were made by the defendant steamship companies in Europe, but until March, 1910, were partly carried into effect by a committee representing them in the City of New York. This defendant denies that the steerage rates on any steamer so selected by the defendant lines were ever reduced lower than was necessary to meet such unfair competition and to prevent the defendant lines from being deprived of their fair share of the steerage traffic from New York to European ports. It admits that whenever any so-called "fighting steamer" secured more steerage passengers than it could lawfully carry, the defendant steamship lines through said committee or otherwise arranged for carrying such excess passengers at the advertised steerage rates of such "fighting steamer" on some other of their steamships and that the line or lines carrying such excess steerage passengers at such reduced rates was or were compensated by the other defendant steamship lines by payments amounting for

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each passenger so carried to the difference between the regular advertised steerage rate of such line and such reduced rate.

14. Answering that portion of Subdivision C of Part V of the Petition entitled "Competitors are crushed" this defendant admits, on information and belief that the method hereinabove described of meeting the competition of lines not parties to the Atlantic Conference was employed to meet the unfair competition of steamships of the Russian Volunteer Fleet and of the Russian-American Line operating and carrying steerage passengers between the port of New York and the port of Libau in Russia. It denies that said method was devised or employed to suppress the competition of said last mentioned lines or that such competition was crushed thereby, but it says that said method was devised and employed solely to protect the business of the defendant lines and not to effect the objects of any unlawful contract, combination or conspiracy whatever.
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15. The defendant denies each and every allegation contained in the paragraph of subdivision C of Part V of the petition entitled "The Russian Volunteer Fleet is Driven out of Business," except that it admits that from March to June, 1908, the said Russian Volunteer Fleet frequently advertised its steamships to sail from the port of New York to the port of Libau in Russia, and advertised for and solicited persons to sail as third-class or steerage passengers on such ships, and that when such ships were so advertised to sail, said defendant lines selected a steamer and advertised the same to sail from the port of New York on or about the day that the ship of the Russian Volunteer Fleet was so advertised to sail and advertised a rate for steerage passengers on such steamer lower than the regular
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steerage rates of the defendant lines and low enough but not lower than necessary to meet the competition of said ship of the Russian Volunteer Fleet, and except that it admits that in the month of July, 1908, or shortly prior thereto, said Russian Volunteer Fleet withdrew its steamships from such service, and has ever since ceased to operate said line. This defendant says that the steerage rates charged on said ships of the Russian Volunteer Fleet and on the steamers so selected by the defendant lines to meet their competition were so low that neither the Russian Volunteer Fleet nor any other line could derive any profit therefrom and that the business done at such rates resulted in loss. 518

16. This defendant says that in the year 1908, the business of transporting steerage passengers between the United States and Europe was greatly depressed. Upon information and belief, it says that the Russian Volunteer Fleet was in that year making low steerage rates, west and eastbound, in order to create traffic, but the movement of steerage passengers was so light that its voyages were conducted at a loss, as was also the case in that year with the voyages of the ships of the defendant lines. Upon information and belief, this defendant says that the withdrawal of the Russian Volunteer Fleet was occasioned partly by the small volume of traffic and partly by the entrance of the Russian American Line as a competitor into the trade between Libau and New York, and by losses of the Russian Volunteer Fleet in no way due to any act or acts of the defendant lines or of any thereof. 519

17. Upon information and belief, this defendant says that when the Russian Volunteer Fleet withdrew, the Russian American Line took over and assumed its contracts for the carriage of steerage passengers under an arrangement between it and the Russian Volunteer



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Fleet, of the terms of which this defendant has no knowledge.

18. This defendant believes, and therefore says that the withdrawal of the ships of the Russian Volunteer Fleet from the service between New York and Libau caused no detriment or loss to the public or to persons desiring to procure steerage transportation between New York and Libau.

521 19. Answering that portion of subdivision C of Part V of the petition entitled "The Russian American Line is driven out of competition and forced into the unlawful combination and conspiracy," this defendant admits and says that from the month of March until the month of September, 1908, the Russian American Line was engaged in operating its line of steamships from the port of New York to the port of Libau, in Russia, and carried thereon third-class or steerage passengers, and that frequently during said period, it advertised its steamships to sail from said port of New York, and advertised for and solicited persons to travel upon its ships as third-class or steerage passengers, and that in each such instance the defendant lines selected a steamer and advertised the same to

522 sail at or about the same time as the ship of the Russian American Line, and advertised a rate for steerage passengers on such steamer lower than the regular steerage rates of the defendant lines and low enough but not lower than necessary to meet the competition of said ship of the Russian American line. This defendant says that the steerage rates charged on said ships of the Russian American Line and on the steamers so selected by the defendant lines to meet their competition were so low that neither the Russian American Line, nor any other line could derive any profit therefrom and that the business done at such rates resulted in loss.



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It admits that at about the time mentioned in the petition the Russian American-Line became a party to the Atlantic Conference and has since carried on its business under said contract dated Feb. 5, 1908, in so far as the same applies thereto. It denies any unfair or unlawful competition by the defendant lines with the Russian-American Line. By reason of the unremunerative rates charged this defendant believes that the Russian-American Line incurred financial loss in the conduct of its steerage traffic, but denies that the Russian-American Line sought admission to the Atlantic Conference in order to be permitted to continue in said business; or that since its admission to said Conference it has been conducting its said business free from competition with the other defendant lines. It denies that the Atlantic Conference is an unlawful combination or conspiracy, or that the contract of February 5, 1908, was or is unlawful, or that the people of the United States have suffered any loss or detriment therefrom or from any act of any of the defendants thereunder. 524

20. Answering that portion of Subdivision C of Article V of the petition entitled "Unfair competition against the Uranium Steamship Company," this defendant says it has no information as to whether the Uranium Steamship Company is a corporation organized and existing under the Laws of Great Britain. It admits that about April 1, 1909, said company began to operate, and has ever since operated, a regular line of steamships under the name of the North West Transport Line between the ports of New York and Rotterdam, and began to carry and has ever since carried steerage passengers thereby between said ports without being a party to said contract of February 5, 1908. It says that the rates at which said Uranium 525

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Steamship Company advertised to carry steerage passengers were below a fair and reasonable rate for the service offered. It admits that the defendant lines met this competition in the same manner in which they had met the competition of the Russian Volunteer Fleet and of the Russian-American Line, as hereinbefore described. It admits that in March, 1910, the afore-said committee in New York was disbanded, and that since then the so-called "fighting steamers" have been selected and their rates for steerage transportation have been fixed by the defendant steamship lines in Europe. It denies that such rates are now or since March, 1910, have been put in force by notices sent out by the individual defendants to the agents throughout the United States for the sale of tickets for third-class steerage transportation on the defendant lines. It says that the measures taken by the defendant lines for the purpose of meeting the competition of said North West Transport Line were lawful and necessary for the protection of the business of the defendant lines and were not adopted for the purpose of excluding said North West Transport Line from a participation in said traffic or of effectuating any restraint or monopoly of said traffic. It denies that said North West Transport Line has at any time been prevented from obtaining a fair and reasonable share of said traffic and as to whether the traffic which it has obtained was or was not secured at a financial loss this defendant has no knowledge or information sufficient to form a belief.

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It denies on information and belief that the defendant steamship lines have agreed in pursuance of any unlawful combination or conspiracy that no one of them shall continue in its employ as agent for the sale of tickets over its line any person who shall act as agent for the sale of third-class or steerage tickets over any independent line in competition with said defendant

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lines or that measures provided for thereunder are employed by the individual defendants within the United States or in the Southern District of New York on behalf of the defendant lines as a part of any illegal attack upon said North West Transport Line. This defendant says that long before said contract of February 5, 1908, was made, an agreement was entered into between some or all of the defendant lines and others that no one of the lines so agreeing would employ as agent for the sale of tickets over its line any person who should act for the sale of tickets over any line other than the lines so agreeing; that this agreement was made in self defense to guard against frauds by ticket agents in sacrificing the interests of their principals by cutting rates and diverting business from the lines employing them and by deceiving and defrauding persons applying to them for passage, and by committing other frauds upon the travelling public as well as upon their principals; that said agreement was and is valid and lawful and has promoted the public convenience and the honest conduct of the trans-atlantic steerage business. 530

21. This defendant denies each and every allegation contained in that portion of Subdivision C of Part V of the Petition entitled "Excessive and arbitrary rates are charged by defendants for steerage transportation." 531

22. Answering that paragraph of subdivision C of Part V of the Petition entitled "Penal enforcement of the terms of the unlawful contract," this defendant denies that since the adoption of the contract of February 5th, 1908, any of the parties thereto has been subjected to any duress or constraint in conducting its steerage business, and refers to the terms of said contract for the particulars thereof.

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23. Answering Part VI of the Petition this defendant denies that the defendant steamship lines have obtained or attempted to obtain a virtual or any monopoly of any part of the traffic of transporting steerage passengers in trade and commerce between the United States and foreign nations, and it denies that said contract was or is unlawful, or that it was or is a party to any unlawful contract, combination or conspiracy, or to any conspiracy whatever. It says that it has no knowledge or information sufficient to form a belief as to what per cent of the total third-class or steerage passenger traffic between Europe and North America was carried in ships belonging to the defendant steamship lines at the date of the filing of the Petition herein.

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24. Further answering this defendant says that the act of the Congress of the United States of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies" does not apply to the business of transporting passengers upon the ocean between ports of the United States and ports of Europe. But it says that even if said act should be held to apply to such business said agreement among the defendant steamship lines of February 5, 1908, does not come within the prohibitions thereof because said agreement is not an agreement in restraint of trade or commerce with foreign nations and the effect thereof is not to monopolize or to attempt to monopolize any part of such trade or commerce. Said agreement is necessary for the protection and development of that portion of the trade and commerce of the United States with foreign nations which consists in the transportation of steerage passengers between ports of the United States and

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European ports, and is a reasonable regulation thereof tending to promote and not to restrain the same.

25. This defendant further answering says that the practices of unscrupulous agents formerly caused great losses to the steamship companies operating between the United States and Europe, and great losses and hardships to persons travelling in the steerage. As long as there was wholly unregulated competition among the steamship lines and no understanding whatever among them, there were "general steamship agents" in New York City with agencies in the interior of the country, and the latter used to issue orders for tickets from New York to Europe on their connection in New York, which did not mention any line or steamer and which the agent sold at a price which was acceptable to him. The agent in New York met purchasers of such orders on their arrival in New York, placed them in a boarding house which he either owned or controlled, where he extorted from them all the money he could get, while with the ticket orders in his pocket he went from steamship office to steamship office seeking the lowest rate at which he could get his passengers transported. The steamship lines fought these vicious methods in every possible way, and the desire to protect steerage passengers from extortion at the hands of unscrupulous agents and to put the business on a decent basis was one of the principal motives which led to the formation of the Atlantic Conference by said agreement of February 5, 1908, and of other Conferences which preceded it. 536

26. Further answering this defendant says that the history of the transatlantic steamship trade shows that unregulated competition has always led to disastrous rate wars, ruinous to the steamship companies and harmful to the public in that they deprived the public 537

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of improvements in ships and service which the Companies, because of their losses, were unable to make. Another disadvantage to the public was the inability of weaker lines to endure the strain of such wars and the curtailment of service consequent upon their retirement. Prior to said contract of February 5, 1908, a number of important steamship lines which had long operated between Europe and the port of New York, carrying steerage passengers, were driven out of business by the effect of rate wars growing out of unregulated competition. In one of these rate wars 539 steerage rates between New York and Europe went as low as \$10 per passenger, out of which sum agents received a commission of \$3, \$4, and even \$5. Only the strongest lines could survive such wars and even they made a precarious living as is shown by the long series of years in which transatlantic steamship lines did not pay any dividends to their stockholders. Taking this defendant as an example, it is the fact that the Hamburg-American Line paid no dividends whatever in the years 1873, 1874, 1875, 1876, 1877, 1884, 1885, 1892, 1893 and 1894. This defendant says that one of the main objects of said agreement of February 5, 1908, was to prevent the recurrence of such 540 ruinous rate wars which in the past have been so harmful to the public as well as to the steamship companies. It avers that the effect of said agreement is not to destroy competition among the parties thereto, but only to regulate such competition reasonably so that all the steamship companies parties thereto may exercise a reasonable and beneficial control over the agencies for the sale of steerage tickets, and may charge fair, reasonable and stable rates, and thus be able to meet the constant public demand for better ships and better accommodations without substantial increase of rates, and so that the weaker lines may be able to live and

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compete for and retain fair shares of such steerage traffic.

27. This defendant further answering says that the evils of unregulated competition among American railroads have long been recognized and they have been practically done away with since the passage of the Interstate Commerce Act through the regulation exercised thereunder by the Interstate Commerce Commission. The injurious effects of rate wars among ocean carriers are, however, much greater than in the case of rate wars among railroads. The competition to which railroads are exposed is far less intense than that to which ocean carriers are exposed. In order to construct a railroad a very large capital must be provided, a franchise must be secured, a right of way obtained, and tracks must be laid. Every railroad has a substantial amount of local uncompetitive business which helps to live through a rate war involving its competitive business. No franchise, on the other hand, is required to sail the high seas. All the business of an ocean steamship company is competitive. There are no limits to the potential competition. Any person with capital enough to assemble a few steamers may start a competition which may result in demoralizing the whole transatlantic carrying trade. The need of regulation is, therefore, much greater in the case of the transatlantic steamship companies than in the case of the railroads. It is an impressive fact that for many years with the knowledge of all departments of the government the railroads from New York to the west have apportioned among themselves the business of transporting immigrants from New York to their western destinations in accordance with an agreement similar to that among the defendant steamship lines which is attacked in the present suit. The



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Interstate Commerce Commission in 1904 investigated this so-called immigrant passenger pool of the railroads and decided that under the circumstances it was the best method of handling that class of traffic, not only for the railroads, but for the immigrants themselves. This permitted agreement among the railroads applies to the very same passengers which the defendant steamship lines carry under a similar agreement which the petitioner in this suit charges to be unlawful.

- 545 28. This defendant further answering says that the transportation facilities and accommodations for steerage passengers have never been so good as since the formation of the Atlantic Conference under the agreement of February 5, 1908, and the competition of the different lines in providing larger and safer steamers with improved facilities and accommodations has never been so active as since the date of said agreement. As examples of the result of such competition may be mentioned the steamers Olympic and Titanic of the White Star Line of 45,000 tons each, the Aquitania now in course of construction by the Cunard Line of approximately 48,000 tons, and the three steamers being built by the Hamburg-American
- 546 Line of the Imperator class of about 50,000 tons. Notwithstanding the great betterment of the accommodations provided and the great increase in the cost of steamers, which twenty-three years ago for the finest steamers was about \$2,000,000 each, and now is about \$8,000,000 each, the price for steerage transportation is very little more than the normal rate charged many years prior to the making of said agreement of February 5, 1908, although the accommodations now provided are greatly superior to those then furnished. The slight increase in the rate certainly



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does not compensate the carriers for the decrease in the purchasing power of money which has taken place, nor for the cost of the improved facilities and accommodations now offered. Improvements of the kind now being made cannot be continued unless the steamship companies have some assurance that reasonably remunerative and stable rates can be maintained and that they will not be exposed to the hazards attendant upon the violent fluctuations of rates which always have accompanied wholly unregulated competition upon the ocean. Such assurance they can only obtain through some form of moderate and reasonable regulation such as is provided by said agreement of February 5, 1908.

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29. This defendant further answering says that in the absence of an international agreement there is and can be no regulating authority between the United States and the countries to which the ships of the defendant steamship lines belong which can authorize the establishment and maintenance of reasonable, fair and stable rates for the transportation of steerage passengers except by fair and reasonable agreement in relation thereto by and among the persons or corporations engaged in such transportation, and therefore, in order to provide proper, safe and commodious service for the said steerage traffic this defendant and the other defendant lines, parties to said contract of February 5, 1908, have been compelled to agree with one another, as was done in said contract, for the reasonable regulation of said traffic. The transportation of steerage passengers since the date of said contract has not resulted in more than a just and reasonable compensation to this defendant or to the other defendant lines for the expense incurred and the service rendered by them in the carriage of such passengers.

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30. This defendant denies each and every allegation contained in the Petition and not hereinbefore specifically admitted. Having thus made full answer to all the matters and things contained in the Petition, this defendant prays to be dismissed hence with its costs in this behalf incurred.

SPOONER & COTTON,  
Solicitors for the defendant the Hamburg-  
Amerikanische Packet-Fahrt-Actien-  
Gesellschaft.

551 JOHN C. SPOONER,  
JOSEPH P. COTTON, JR.,  
GEORGE RUBLEE,  
Of Counsel.

HAMBURG-AMERIKANISCHE PACKET-FAHRT-  
ACTIEN-GESELLSCHAFT,  
By

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**Answer of Emil L. Boas.**

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IN THE DISTRICT COURT OF THE UNITED  
STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK IN THE  
SECOND CIRCUIT.

THE UNITED STATES OF AMERICA,  
Petitioner,  
against

HAMBURG-AMERIKANISCHE PAC-  
KET - FAHRT - ACTIEN - GESELL-  
SCHAFT and others,  
Defendants.

In Equity.

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The separate answer of the defendant Emil L. Boas to the Petition of the United States of America, filed herein on January 4th, 1911.

This defendant answering unto so much and such parts of said Petition as he is advised it is material and necessary for him to make answer unto, says:

1. Answering Part I of the Petition he admits that the defendant steamship lines herein, except the Canadian Pacific Railway Company, are engaged in foreign trade and commerce as common carriers of passengers and freight, including third-class, or steerage passengers, between ports in the United States and ports in Europe, but he denies that the Hamburg-American Line is or, upon information and belief, that any of the other defendant lines except the Canadian Pacific Railway Company is engaged as a common carrier of passengers and freight between inland points in the United States and ports or inland points in Europe, Asia and Africa. In regard to the Canadian Pacific Railway Company, he believes that said Com-

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pany is not engaged as a common carrier of passengers and freight between ports in the United States and ports in Europe, and therefore denies that this is the fact, but he has no information, knowledge or belief as to whether said Canadian Pacific Railway Company is engaged as a common carrier of passengers and freight including third-class or steerage passengers, between inland points in the United States and ports or inland points in Europe, Asia and Africa. He denies that in respect to said commerce in which the Hamburg-American Line is engaged, or otherwise, it is violating, or ever has violated, in any way any of the provisions of the Act of the Congress of the United States entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," approved July 2nd, 1890, and upon information and belief he makes the same denial as regards the other defendant steamship lines.

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2. Answering Part II of the Petition he admits the allegations contained in paragraph 13.

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He admits the allegations contained in paragraph 14, but he says that the term "resident director" as applied to himself is merely descriptive of his functions as general agent of the Hamburg-American Line in the United States. He denies that he is a member of the board of directors of the Hamburg-American Line or that he has any authority to represent it outside of the United States.

He denies each and every allegation contained in paragraph 24, except that he admits that some of the defendant steamship lines are in some respects natural competitors.

Upon information and belief generally, but without information as to many of such allegations concerning the other defendants, he admits the allegations contained in paragraphs numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22 and 23.

3. Answering Part III of the Petition, he admits that the steerage traffic to and from Europe has been large, that the steamship companies engaged in carrying such traffic have extended their facilities for handling the same, and that the income from that description of traffic is an important part of their revenue, and except as to the allegations so admitted he says that he has no knowledge, information or belief in regard to the allegations contained in said Part III of the Petition.

4. Answering Part IV of the Petition he denies each and every allegation contained in said Part IV of the Petition, in so far as the same applies to the Hamburg-American Line or to himself, and upon information and belief, he denies each and every allegation therein contained in so far as the same applies to the other defendants. 560

5. Answering paragraph 1 of Subdivision A of Part V of the Petition, he admits that on or about February 5th, 1908, at the City of London, England, the Hamburg-American Line entered into an agreement with the other defendant steamship lines, a copy of which agreement is annexed to the Petition and marked "Exhibit A." He believes such copy to be substantially correct, but for greater certainty craves leave to refer to the original thereof when the same shall be produced. He denies that in becoming a party to said agreement the Hamburg-American Line entered into any unlawful combination or conspiracy, or into any conspiracy whatever, or that said agreement was or is unlawful. He says that said agreement was and is lawful under the laws of England where it was made, and under the laws of Germany which govern the Hamburg-American Line and its steamships, and that it was not and is not in violation of the laws of the United States. 561

6. He admits the allegations contained in paragraphs numbered 2, 3, 4, 5, 6, 7, 8 and 9 of Subdivision A of Part V of the Petition, in so far as they set forth the provisions of said agreement dated February 5th, 1908, but he denies the allegations contained in the Petition in regard to the meaning, legal effect and intent of said agreement, and for greater certainty craves leave to refer to the original of said agreement when the same shall be produced.

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7. Answering Subdivision B of Part V of the Petition he admits that at about the time mentioned in the Petition the Russian-American Line was admitted to membership in the Atlantic Conference and to the provisions of said contract, and that the shares of the lines parties to said contract were in some respects altered so as to provide a percentage of said steerage traffic for the Russian-American Line

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He admits that by the terms of said contract of February 5th, 1908, the same was to remain effective up to and including February 28th, 1911, and thereafter from year to year, unless notice of intention to withdraw therefrom at the end of any year should be given by one or more of the parties thereto on or before the first day of December of the year in which such notice should be given, as in said contract provided.

8. Answering paragraph 1 of Subdivision C of Part V of the Petition he admits, on information and belief, that since the adoption of the aforesaid contract, the business of the said defendant steamship lines, in so far as it consists of the steerage traffic referred to therein and in so far as said contract applies thereto, has been and at the date of filing this petition was carried on by the defendant steamship lines in accordance with the terms and provisions thereof, and in accordance with the terms and provisions of resolu-

tions adopted by said contracting parties at meetings held in pursuance thereof, but he denies that all free and natural competition between said lines in the establishment of rates and the furnishing of facilities for such steerage traffic has been or is thereby eliminated, and he denies that said contract ever was or is unlawful.

9. Answering paragraph 2 of Subdivision C of Part V of the Petition he denies, on information and belief, that the successful accomplishment of the objects of said agreement necessarily involved the execution of the terms, scope and intent of said agreement throughout the United States, or in the Southern District of New York, or that ever since February 5, 1908, for the effective accomplishment of the objects of said agreement, each of the individual defendants herein has been or is designated and established by his respective line at his respective office in the United States, as agent for such line, to carry out and make effective the terms, objects and intent of said agreement in the United States, or that said individual defendants, at their respective offices and agencies throughout the United States, or in the Southern District of New York, at the times mentioned in the Petition, have carried out and executed acts necessary for the successful accomplishment of the purposes of the parties to said agreement. He denies that said agreement was or is unlawful or that it was entered into in pursuance of any unlawful combination or conspiracy.

10. Answering the first sentence of paragraph 3 of Subdivision C of Part V of the Petition, he denies each and every allegation contained therein, except that he admits that he has from time to time received orders and instructions from his principal in Europe, and, upon information and belief, that the agents of

the other defendant lines in the United States, have from time to time received orders and instructions from their respective principals in Europe, in respect to the sailing of steamers and in respect to rates of passage and other business, and that he and they have complied with and carried out such orders and instructions.

11. He denies each and every allegation of that portion of subdivision C of Part V of the Petition entitled "Agreement to destroy competition of independent lines."

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12. Further answering, he says that in order to meet low rates, then offered by a line of steamships not a party to said contract of February 5, 1908, operating between New York and the Continent of Europe, the said defendant lines agreed, at a meeting held at the City of London, in England, on or about May 25th, 1908, that one of such lines should, when necessary, quote low rates in competition with the rates of said outside line.

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13. Answering that portion of subdivision C of Part V of the Petition entitled "Arrangement to use so-called 'fighting steamers' to destroy competition," he denies that the facts are correctly stated in the Petition and alleges the facts to be as follows:

He admits and says that in pursuance of said agreement of May 25, 1908, and for the purpose of defending themselves against competition by steamship lines other than the defendant lines, said defendant lines arranged for the use from time to time of steamers belonging to them, so that in case and only in case a steamship belonging to a line not a party to said contract of February 5, 1908, should be scheduled to sail eastbound from the port of New York to a European port and should offer unremunerative steerage rates



necessarily involving the carriage of steerage passengers at a loss, for the obvious purpose of diverting steerage business from the steamships of the defendant lines, a steamship belonging to one of the defendant lines would be selected to sail from the port of New York at about the same time and to carry steerage passengers at rates lower than the ordinary steerage rates on the steamships of the defendant lines, for the purpose of meeting and preventing the intended effect of such competition. Said arrangements with regard to the so-called "fighting steamers" were made by the defendant steamship companies in Europe, but until March, 1910, were partly carried into effect by a committee representing them in the City of New York. This defendant denies that the steerage rates on any steamer so selected by the defendant lines were ever reduced lower than was necessary to meet such competition and to prevent the defendant lines from being deprived of their fair share of the steerage traffic from New York to European ports. He admits that whenever any so-called "fighting steamer" secured more steerage passengers than it could lawfully carry, the defendant steamship lines through said committee or otherwise arranged for carrying such excess passengers at the advertised steerage rates of such "fighting steamer" on some other of their steamships and that the line or lines carrying such excess steerage passengers at such reduced rates was or were compensated by the other defendant steamship lines by payments amounting for each passenger so carried to the difference between the regular advertised steerage rate of such line and such reduced rate.

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14. Answering that portion of Subdivision C of Part V of the petition entitled "Competitors are crushed" he admits on information and belief that the method hereinabove described of meeting the competi-

tion of lines not parties to the Atlantic Conference was employed to meet the competition of steamships of the Russian Volunteer Fleet and of the Russian-American Line operating and carrying steerage passengers between the port of New York and the port of Libau in Russia. He denies that said method was employed to suppress the competition of said last mentioned lines or that such competition was crushed thereby, but he says that said method was employed solely to protect the lawful business of the defendant lines and not to effect the objects of any unlawful contract, combination or conspiracy whatever.

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15. He denies each and every allegation contained in the paragraph of Subdivision C of Part V of the petition entitled "The Russian Volunteer Fleet is Driven out of Business," except that he admits that from March to June, 1908, the said Russian Volunteer Fleet frequently advertised its steamships to sail from the port of New York to the port of Libau in Russia, and advertised for and solicited persons to sail as third-class or steerage passengers on such ships, and that when such ships were so advertised to sail, said defendant lines selected a steamer and advertised the same to sail from the port of New York on or about the day that the ship of the Russian Volunteer Fleet was so advertised to sail and advertised a rate for steerage passengers on such steamer lower than the regular steerage rates of the defendant lines and low enough but not lower than necessary to meet the competition of said ship of the Russian Volunteer Fleet, except that he admits that in the month of July, 1908, or shortly prior thereto, said Russian Volunteer Fleet withdrew its steamships from such service, and has ever since ceased to operate said line. He says that the steerage rates charged on said ships of the Russian Volunteer Fleet and on the steamers so se-

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lected by the defendant lines to meet their competition were so low that neither the Russian Volunteer Fleet nor any other line could derive any profit therefrom and that the business done at such rates resulted in loss.

16. He says that in the year 1908 the business of transporting steerage passengers between the United States and Europe was greatly depressed. Upon information and belief, he says that the Russian Volunteer Fleet was in that year making low steerage rates, west and eastbound, in order to create traffic, but the movement of steerage passengers was so light that its voyages were conducted at a loss as was also the case in that year with the voyages of the ships of the defendant lines. Upon information and belief, he says that the withdrawal of the Russian Volunteer Fleet was occasioned partly by the small volume of traffic and partly by the entrance of the Russian-American Line as a competitor into the trade between Libau and New York, and by losses of the Russian Volunteer Fleet in no way due to any act or acts of the defendant lines or of any thereof. 578

17. Upon information and belief, he says that when the Russian Volunteer Fleet withdrew, the Russian-American Line took over and assumed its contracts for the carriage of steerage passengers under an arrangement between it and the Russian Volunteer Fleet of the terms of which he has no knowledge. 579

18. He believes, and therefore says that the withdrawal of the ships of the Russian Volunteer Fleet from the service between New York and Libau caused no detriment or loss to the public or to persons desiring to procure steerage transportation between New York and Libau.

*Answer of Emil L. Boas*

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19. Answering that portion of Subdivision C of Part V of the petition entitled "The Russian-American Line is driven out of competition and forced into the unlawful combination and conspiracy," he admits and says that from the month of March until the month of September, 1908, the Russian-American Line was engaged in operating its line of steamships from the port of New York to the port of Libau, in Russia, and carried thereon third-class or steerage passengers, and that frequently during said period, it advertised its steamships to sail from said port of New York, and advertised for and solicited persons to travel upon its ships as third-class or steerage passengers, and that in each such instance the defendant lines selected a steamer and advertised the same to sail at or about the same time as the ship of the Russian-American Line, and advertised a rate for steerage passengers on such steamer lower than the regular steerage rates of the defendant lines and low enough but not lower than necessary to meet the competition of said ship of the Russian-American Line. He says that the steerage rates charged on said ships of the Russian-American line and on the steamers so selected by the defendant lines to meet their competition were so low that neither the Russian-American Line, nor any other line could derive any profit therefrom and that the business done at such rates resulted in loss.

He admits that at about the time mentioned in the petition the Russian-American Line became a party to the Atlantic Conference and has since carried on its business under said contract dated Feb. 5, 1908, in so far as the same applied thereto. He denies any unfair or unlawful competition by the defendant lines with the Russian-American Line. By reason of the unremunerative rates charged this defendant believes that the Russian-American Line incurred financial loss in

the conduct of its steerage traffic, but denies that the Russian-American Line sought admission to the Atlantic Conference in order to be permitted to continue in said business; or that since its admission to said conference it has been conducting its said business free from competition with the other defendant lines. He denies that the Atlantic Conference is an unlawful combination or conspiracy, or that the contract of February 5, 1908, was or is unlawful, or that the people of the United States have suffered any loss or detriment therefrom or from any act of any of the defendants thereunder.

20. Answering that portion of Subdivision C of Part V of the petition entitled "Unfair Competition against the Uranium Steamship Company," this defendant says he has no information as to whether the Uranium Steamship Company is a corporation organized and existing under the laws of Great Britain. He admits that about April 1, 1909, said company began to operate, and has ever since operated, a regular line of steamships under the name of the North West Transport Line and other names between the ports of New York and Rotterdam, and began to carry and has ever since carried steerage passengers thereby between said ports without being a party to said contract of February 5, 1908. He says that the rates at which said Uranium Steamship Company advertised to carry steerage passengers were below a fair and reasonable rate for the service offered. He admits that the defendant lines met this competition in the same manner in which they had met the competition of the Russian Volunteer Fleet and of the Russian-American Line, as hereinbefore described. He admits that in March, 1910, the aforesaid committee in New York was disbanded, and that since then the so-called "fighting steamers" have been selected and their rates for steer-

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age transportation have been fixed by the defendant steamship lines in Europe. He denies that such rates are now or since March, 1910, have been put in force by notices sent out by the individual defendants to the agents throughout the United States for the sale of tickets for third-class steerage transportation on the defendant lines. He says that the measures taken by the defendant lines for the purpose of meeting the competition of said North West Transport Line were lawful and necessary for the protection of the business of the defendant lines and were not adopted for the purpose of excluding said North West Transport Line from a participation in said traffic or of effectuating any restraint or monopoly of said traffic. He denies that said North West Transport Line has at any time been prevented from obtaining a fair and reasonable share of said traffic, and as to whether the traffic which it has obtained was or was not secured at a financial loss he has no knowledge or information sufficient to form a belief.

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He denies on information and belief that the defendant steamship lines have agreed in pursuance of any unlawful combination or conspiracy that no one of them shall continue in its employ as agent for the sale of tickets over its line any person who shall act as agent for the sale of third-class or steerage tickets over any independent line in competition with said defendant lines or that measures provided for thereunder are employed by the individual defendants within the United States or in the Southern District of New York on behalf of the defendant lines as a part of any illegal attack upon said North West Transport Line. He says that long before said contract of February 5, 1908, was made, an agreement was entered into between some or all of the defendant lines and others that no one of the lines so agreeing would employ as agent for the sale of tickets over its line

any person who should act for the sale of tickets over any line other than the lines so agreeing; that this agreement was made in self defence to guard against frauds by ticket agents in sacrificing the interests of their principals by cutting rates and diverting business from the lines employing them and by deceiving and defrauding persons to whom they sold tickets, and by committing other frauds upon the traveling public as well as upon their principals; that said agreement was and is valid and lawful and has promoted the public convenience and the honest conduct of the transatlantic steerage business.

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21. He denies each and every allegation contained in that portion of Subdivision C of Part V of the petition entitled "Excessive and arbitrary rates are charged by defendants for steerage transportation."

22. Answering that paragraph of Subdivision C of Article V of the petition entitled "Penal enforcement of the terms of the unlawful contract," he denies that since the adoption of the contract of February 5th, 1908, any of the parties thereto has been subjected to any duress or constraint in conducting its steerage business, and refers to the terms of said contract for the particulars thereof.

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23. Answering Part VI of the petition he denies that the defendant steamship lines have obtained or attempted to obtain a virtual or any monopoly of any part of the traffic of transporting steerage passengers in trade and commerce between the United States and foreign nations, and he denies that said contract was or is unlawful, or that the Hamburg-American Line was or is a party to any unlawful contract, combination or conspiracy, or to any conspiracy whatever. He says that he has no knowledge or information sufficient to form a belief as to what per cent of the total



third-class or steerage passenger traffic between Europe and North America was carried in ships belonging to the defendant steamship lines at the date of the filing of the petition herein.

24. Further answering he says that the act of the Congress of the United States of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies" does not apply to the business of transporting passengers upon the ocean between ports of the United States and ports of Europe. But he says that even if said act should
- 593 be held to apply to such business said agreement among the defendant steamship lines of February 5, 1908, does not come within the prohibitions thereof because said agreement is not an agreement in restraint of trade or commerce with foreign nations and the effect thereof is not to monopolize or to attempt to monopolize any part of such trade or commerce. Said agreement is necessary for the protection and development of that portion of the trade and commerce of the United States with foreign nations which consist in the transportation of steerage passengers between ports in the United States and European ports, and is a reasonable regulation thereof tending to promote
- 594 and not to restrain the same.

25. This defendant further answering says that the practices of unscrupulous agents formerly caused great losses to the steamship companies operating between the United States and Europe, and great losses and hardships to persons travelling in the steerage. As long as there was wholly unregulated competition among the steamship lines and no understanding whatever among them, there were "general steamship agents" in New York City with agencies in the interior of the country, and the latter used to issue orders for tickets from New York to Europe on their



connection in New York, which did not mention any line or steamer and which the agent sold at a price which was acceptable to him. The agent in New York met purchasers of such orders on their arrival in New York, placed them in a boarding house which he either owned or controlled, where he extorted from them all the money he could get, while with the ticket orders in his pocket he went from steamship office to steamship office seeking the lowest rate at which he could get his passengers transported. The steamship lines fought these vicious methods in every possible way, and the desire to protect steerage passengers from extortion at the hands of unscrupulous agents and to put the business on a decent basis was one of the principal motives which led to the formation of the Atlantic Conference by said agreement of February 5, 1908, and of other conferences which preceded it.

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26. Further answering this defendant says that the history of the transatlantic steamship trade shows that unregulated competition has always led to disastrous rate wars, ruinous to the steamship companies and harmful to the public in that they deprived the public of improvements in ships and service which the companies, because of their losses, were unable to make. Another disadvantage to the public was the inability of weaker lines to endure the strain of such wars and the curtailment of service consequent upon their retirement. Prior to said contract of February 5, 1908, a number of important steamship lines which had long operated between Europe and the port of New York, carrying steerage passengers, were driven out of business by the effect of rate wars growing out of unregulated competition. In one of these rate wars steerage rates between New York and Europe went as low as \$10 per passenger, out of which sum agents received a commission of \$3, \$4, and even \$5. Only

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the strongest lines could survive such wars and even they made a precarious living as is shown by the long series of years in which transatlantic steamship lines did not pay any dividends to their stockholders. Taking the Hamburg-American Line as an example, it is the fact that it paid no dividends whatever in the years 1873, 1874, 1875, 1876, 1877, 1884, 1885, 1892, 1893 and 1894. This defendant says that one of the main objects of said agreement of February 5, 1908, was to prevent the recurrence of such ruinous rate wars which in the past have been so harmful to the public as well as to the steamship companies. He avers that the effect of said agreement is not to destroy competition among the parties thereto, but only to regulate such competition reasonably so that all the steamship companies parties thereto may exercise a reasonable and beneficial control over the agencies for the sale of steerage tickets, and may charge fair, reasonable and stable rates, and thus be able to meet the constant public demand for better ships and better accommodations without substantial increase of rates, and so that the weaker lines may be able to live and compete for and retain fair shares of such steerage traffic.

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27. This defendant further answering says that the evils of unregulated competition among American railroads have long been recognized and they have been practically done away with since the passage of the Interstate Commerce Act through the regulation exercised thereunder by the Interstate Commerce Commission. The injurious effects of rate wars among ocean carriers are, however, much greater than in the case of rate wars among railroads. The competition to which railroads are exposed is far less intense than that to which ocean carriers are exposed. In order to construct a railroad a very large capital must be provided, a franchise must be secured, a right of way

*Answer of Emil L. Boas*

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obtained, and tracks must be laid. Every railroad has a substantial amount of local uncompetitive business which helps it to live through a rate war involving its competitive business. No franchise, on the other hand, is required to sail the high seas. All the business of an ocean steamship company is competitive. There are no limits to the potential competition. Any person with capital enough to assemble a few steamers may start a competition which may result in demoralizing the whole transatlantic carrying trade. The need of regulation is, therefore, much greater in the case of the transatlantic steamship companies than in the case of the railroads. It is an impressive fact that for many years with the knowledge of all departments of the government the railroads from New York to the west have apportioned among themselves the business of transporting immigrants from New York to their western destinations in accordance with an agreement similar to that among the defendant steamship lines which is attacked in the present suit. The Interstate Commerce Commission in 1904 investigated this so-called immigrant passenger pool of the railroads and decided that under the circumstances it was the best method of handling that class of traffic, not only for the railroads, but for the immigrants themselves. This permitted agreement among the railroads applies to the very same passengers which the defendant steamship lines carry under a similar agreement which the petitioner in this suit charges to be unlawful.

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28. This defendant further answering says that the transportation facilities and accommodations for steerage passengers have never been so good as since the formation of the Atlantic Conference under the agreement of February 5, 1908, and the competition of the different lines in providing larger and safer steamers with improved facilities and accommodations has

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*Answer of Emil L. Boas*

never been, so active as since the date of said agreement. As examples of the result of such competition may be mentioned the steamers Olympic and Titanic of the White Star Lines of 45,000 tons each, the Aquitania now in course of construction by the Cunard Line of approximately 48,000 tons, and the three steamers being built by the Hamburg-American Line of the Emperor class of about 50,000 tons. Notwithstanding the great betterment of the accommodations provided and the great increase in the cost of steamers, which twenty-three years ago for the finest steamers  
605 was about \$2,000,000 each, and now is about \$8,000,000 each, the price for steerage transportation is very little more than the normal rate charged many years prior to the making of said agreement of February 5, 1908, although the accommodations now provided are greatly superior to those then furnished. The slight increase in the rate does not compensate the carriers for the decrease in the purchasing power of money which has taken place, nor for the cost of the improved facilities and accommodations now offered. Improvements of the kind now being made cannot be continued unless the steamship companies  
606 have some assurance that reasonably remunerative and stable rates can be maintained and that they will not be exposed to the hazards attendant upon the violent fluctuations of rates which always have accompanied wholly unregulated competition. Such assurance they can only obtain through some form of moderate and reasonable regulation such as is provided by said agreement of February 5, 1908.

29. This defendant further answering says that in the absence of an international agreement there is and can be no regulating authority between the United States and the countries to which the ships of the defendant steamship lines belong which can authorize

*Answer of Emil L. Boas*

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the establishment and maintenance of reasonable, fair and stable rates for the transportation of steerage passengers except by fair and reasonable agreement in relation thereto by and among the persons or corporations engaged in such transportation, and therefore, in order to provide proper, safe and commodious service for the said steerage traffic the Hamburg-American Line and the other defendant lines, parties to said contract of February 5, 1908, have been compelled to agree with one another, as was done in said contract, for the reasonable regulation of said traffic. The transportation of steerage passengers since the date of said contract has not resulted in more than a just and reasonable compensation to the Hamburg-American Line or to the other defendant lines for the expense incurred and the services rendered by them in the carriage of such passengers.

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30. He denies each and every allegation contained in the petition and not hereinbefore specifically admitted. Having thus made full answer to all the matters and things contained in the petition, he prays to be dismissed hence with his costs in this behalf incurred.

SPOONER & COTTON,  
Solicitors for the Defendant,  
Emil L. Boas.

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JOHN C. SPOONER,  
JOSEPH P. COTTON, JR.,  
GEORGE RUBLEE,  
Of Counsel.

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**610 Answer of the Canadian Pacific Railway Company.**

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK IN THE SECOND CIRCUIT.

THE UNITED STATES OF AMERICA,  
Petitioner,  
against

**611 HAMBURG - AMERIKANISCHE PAC-  
KETFAHRT-ACTIEN-GESELLSCH-  
AFT and others,**  
Defendants.

In Equity.

The separate answer of the defendant the Canadian Pacific Railway Company to the petition of the United States of America, filed herein on January 4th, 1911.

This defendant answering unto so much and such parts of said petition as it is advised it is material and necessary for it to make answer unto, says:

- 612** 1. Answering Part I of the petition, this defendant denies that it is engaged in foreign trade and commerce as a common carrier of passengers and freight, including third-class or steerage passengers between ports in the United States and ports or inland points in Europe, Asia or Africa. It admits that it carries from certain inland points in the United States upon lines of railroad operated by it, persons to whom it has sold contracts for steerage transportation on its steamers sailing from Canadian ports to the port of Liverpool in England, but it says that the contracts for such railroad transportation are entirely separate and distinct from said contracts for steerage transpor-

*Answer of Canadian Pacific Railway Company*

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tation. It denies that it is engaged in such foreign trade and commerce between inland points in the United States and inland points in Europe, Asia or Africa. As regards the other defendant steamship lines, this defendant admits, upon information and belief, that they are engaged in foreign trade and commerce as aforesaid between ports in the United States and ports in Europe, but it denies, upon information and belief that they are so engaged between inland points in the United States and ports or inland points in Europe, Asia or Africa. It denies that in respect to any commerce in which it is engaged, or otherwise, it is violating or ever has violated, in any way any of the provisions of the Act of the Congress of the United States entitled "An Act to Protect Trade and Commerce against Unlawful Restraint and Monopolies," approved July 2, 1890, and upon information and belief it makes the same denial as regards the other defendant steamship lines.

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2. Answering paragraph 9 of Part II of the petition, this defendant admits that at all times mentioned in the petition, it was and now is a corporation organized and existing under and by virtue of the laws of the Dominion of Canada, with an office and place of business and an agent in charge thereof in the City, County, State and Southern District of New York; and it admits that at all such times it has been engaged in operating regular lines of steamships from the port of Liverpool in England to the ports of Montreal, Quebec and St. John, in the Dominion of Canada, and continuous, through lines of railroad connecting with said steamship lines at the ports of Montreal, Quebec, and St. John, and operating thence through the Dominion of Canada into the United States to divers points within the States of Maine and Vermont. The only lines of railway operated by

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this defendant in the United States are the following: Canadian boundary to Mattawamkeag, Maine, a distance of 144.5 miles; Canadian boundary to Houlton, Maine, a distance of three miles; Canadian boundary to Presque Isle, Maine, a distance of 29.2 miles; Canadian boundary to North Troy, Vermont, a distance of 0.72 miles; Richford to Newport, Vermont, a distance of twenty-one miles. It admits that at the times mentioned it has been engaged in transporting between said points in the United States and the said port of Liverpool, by way of said steamships and railway lines, freight and passengers for hire, including that class of passengers known as third-class or steerage passengers. But it says that only a small proportion of the persons to whom this defendant sells in the United States contracts for steerage transportation on its steamers from Canadian ports to Liverpool, England, travel from the United States to Canada on said lines of railway operated by this defendant in the United States, but far the greater number of such persons travel from the United States to Canada on lines of railroad operated by other railway companies and continue their journey through Canada, to the port of their embarkation upon connecting lines of railroad operated either by this defendant or by other railway companies. It admits that at the times mentioned in the petition it has maintained agencies in divers cities in Europe and in the United States at which it has sold contracts for the transportation of freight and passengers on and by its said steamship and railway lines and other railway lines to and from points in the United States and from and to points in Europe; and it has maintained agents in charge of such agencies who have been and now are engaged in soliciting persons to travel to and from Europe upon said steamship and railway lines. But it says that in every case in which it has sold to a

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*Answer of Canadian Pacific Railway Company*

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steerage passenger, contracts for through transportation from a point in the United States by railway either upon its own lines of railroad or upon the lines of one or more other railway companies, or partly upon its own lines of railway and partly upon the lines of another company, to one of said Canadian ports and thence by one of its steamships to Liverpool, the contract or contracts for the railway transportation has or have at all the times mentioned in the petition been separate and distinct from the contract for steamship transportation, and the rates for such railway transportation have at all said times been the regular tariff rates fixed pursuant to the laws of the United States and of the Dominion of Canada without reference or relation to the rate charged by this defendant for transportation upon its steamships. The rates charged by this defendant upon the lines of railway operated by it in the United States are those filed with the Interstate Commerce Commission and permitted by it, and the rates charged upon this defendant's lines of railway in Canada are permitted and authorized by the Canadian Railway Commission, which has powers similar to those exercised in this country by the Interstate Commission. Whenever this defendant has sold to a steerage passenger upon its steamship line a contract or contracts of transportation for the whole or a part of the journey from a point in the United States to the Canadian port of embarkation over the lines of another railway company or of other railway companies, it has charged the passenger the exact tariff rate of such other company or companies and pursuant to arrangement with it or them has paid the amount so received from the passenger to such other company or companies, deriving no profit to itself from the transaction and rendering the service gratuitously to the passenger for his or her convenience. No person purchasing from

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622      *Answer of Canadian Pacific Railway Company*

this defendant in the United States a contract for steerage transportation upon its steamship line from one of said Canadian ports to Liverpool has ever been required to travel from the United States to the port of embarkation for any part of the journey upon its lines of railway, but this defendant has always given him or her free choice to select the railway route from the point of departure in the United States to the port of embarkation in Canada which he or she preferred, and has provided transportation by the route so selected.

623      It denies each and every allegation contained in paragraph 24, except that it admits that some of the defendant steamship lines are in some respects natural competitors.

Upon information and belief generally, but without information as to many of such allegations concerning the other defendants, it admits the allegations contained in paragraphs numbered 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23.

624      3. Answering Part III of the petition this defendant admits that the steerage traffic to and from Europe has been large, that the steamship companies engaged in carrying such traffic have extended their facilities for handling the same, and that the income from that description of traffic is an important part of their revenue, and except as to the allegations so admitted this defendant says that it has no knowledge, information or belief in regard to the allegations contained in said Part "III" of the petition.

4. Answering Part IV of the petition, this defendant denies each and every allegation contained in said Part "IV" of the petition, in so far as the same applies to it, and upon information and belief, it denies each

and every allegation therein contained in so far as the same applies to the other defendants.

5. Answering paragraph 1 of Subdivision A of Part V of the petition, this defendant admits that on or about February 5th, 1908, at the City of London, England, it entered into an agreement with the other defendant steamship lines, a copy of which agreement is annexed to the petition and marked "Exhibit A." It believes such copy to be substantially correct, but for greater certainty craves leave to refer to the original thereof when the same shall be produced. This defendant denies that in becoming a party to said agreement it entered into any unlawful combination or conspiracy, or into any conspiracy whatever, or that said agreement was or is unlawful. This defendant says that said agreement was and is lawful under the laws of England, where it was made, and under the laws of Canada which govern this defendant and its steamships, and that said agreement is not in violation of any law of the United States. 626

This defendant says that pursuant to the terms of said agreement on November 26, 1910, it gave due notice to the secretary of the Atlantic Conference of its intention of terminating the same at the end of the next February, and that on March 1, 1911, its withdrawal from said agreement became effective and since then it has not been and is not now a member of the Atlantic Conference and has not been and is not now bound by or entitled to the benefit of said agreement of February 5, 1908. This defendant also says that its participation in said agreement up to the time of its said withdrawal therefrom was, as appears by the terms thereof, limited to eastbound traffic. 627

This defendant admits the allegations contained in paragraphs numbered 2, 3, 4, 5, 6, 7, 8 and 9, of Subdivision A of Article V of the petition, in so far as

628 *Answer of Canadian Pacific Railway Company*

they set forth the provisions of said agreement dated February 5th, 1908, but it denies the allegations contained in the petition in regard to the meaning, legal effect and intent of said agreement, and for greater certainty craves leave to refer to the original of said agreement when the same shall be produced.

629 6. Answering Subdivision B of Article V of the petition this defendant admits that at about the time mentioned in the petition the Russian-American Line was admitted to membership in the Atlantic Conference and to the provisions of said contract, and that the shares of the lines parties to said contract were in some respects altered so as to provide a percentage of said steerage traffic for the Russian-American Line.

It admits that by the terms of said contract of February 5th, 1908, the same was to remain effective up to and including February 28th, 1911, and thereafter from year to year, unless notice of intention to withdraw therefrom at the end of any year should be given by one or more of the parties thereto on or before the first day of December of the year in which such notice should be given, as in said contract provided.

630 7. Answering paragraph 1 of Subdivision C of Part V of the petition this defendant admits, on information and belief, that from the adoption of the aforesaid contract and so long as it was a party thereto, the business of the said defendant steamship lines, in so far as it consisted of the steerage traffic referred to therein and in so far as said contract applied thereto, was carried on by the defendant lines in accordance with the terms and provisions thereof, and in accordance with the terms and provisions of resolutions adopted by said contracting parties at meetings held in pursuance thereof, but it denies that all free and natural competition between said lines in the establish-

ment of rates and the furnishing of facilities for such steerage traffic was or is thereby eliminated, and it denies that said contract was unlawful. As to the manner in which the business of the other defendant lines has been carried on since March 1, 1911, when this defendant ceased to be a party to said contract it has no knowledge or information sufficient to form a belief.

8. Answering paragraph 2 of Subdivision C of Part V of the petition this defendant denies that it has any knowledge or information sufficient to form a belief as to each and every allegation of said paragraph 2.

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9. Answering the first sentence of paragraph 3 of Subdivision C of Part V of the petition this defendant denies that it has any knowledge or information sufficient to form a belief as to each and every allegation therein.

10. This defendant denies each and every allegation of that portion of Subdivision "C" of Part "V" of the petition entitled "Agreement to Destroy Competition of Independent Lines."

11. Further answering this defendant says that in order to meet low rates then offered by a line of steamships not a party to said contract of February 5, 1908, operating between New York and the Continent of Europe, the said defendant lines agreed, at a meeting held at the City of London in England on or about May 25th, 1908, that one of such lines should when necessary quote low rates in competition with the rates of said outside line.

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12. Answering that portion of Subdivision C of Part V of the petition entitled "Arrangement to use so-called 'fighting steamers' to destroy competition," this defendant denies that the facts are correctly stated in the petition and alleges the facts to be as follows:

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It admits and says that in pursuance of said agreement of May 25, 1908, and for the purpose of defending themselves against unfair competition by steamship lines other than the defendant lines, said defendant lines arranged for the use from time to time of steamers belonging to them, so that in case and only in case a steamship belonging to a line not a party to said contract of February 5, 1908, should be scheduled to sail eastbound from the port of New York to a European port and should offer unremunerative steerage rates necessarily involving the carriage of steerage passengers at a loss, for the obvious purpose of diverting steerage business from the steamships of the defendant lines, a steamship belonging to one of the defendant lines would be selected to sail from the port of New York at about the same time and to carry steerage passengers at rates lower than the ordinary steerage rates on the steamships of the defendant lines, for the purpose of meeting and preventing the intended effect of such unfair competition. Said arrangements with regard to the so-called "fighting steamers" were made by the defendant steamship companies in Europe but until March, 1910, were partly carried into effect by a committee representing them in the City of New York. This defendant denies that so long as it was a party to such arrangements the steerage rates on any steamer so selected by the defendant lines were ever reduced lower than was necessary to meet such competition and to prevent the defendant lines from being deprived of their fair share of the steamship traffic from New York to European ports. It admits that whenever any so-called "fighting steamer" secured more steerage passengers than it could lawfully carry, the defendant steamship lines through said committee or otherwise arranged for carrying such excess passengers at the advertised steerage rate of such "fighting steamer" on some other of their steam-

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ships and that the line or lines carrying such excess steerage passengers at such reduced rates was or were compensated by the other defendant steamship lines by payments amounting for each passenger so carried to the difference between the regular advertised steerage rate of such line and such reduced rate.

This defendant says that on June 15, 1910, it gave due notice of its intention to withdraw from said arrangement to use so-called "fighting steamers" upon the expiration of thirty days and on July 15, 1910, its withdrawal from said arrangement became effective and since then it has not had and it has not now any connection therewith nor any obligation thereunder.

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13. Answering that portion of Subdivision "C" of Part V of the petition entitled "Competitors are crushed" this defendant admits on information and belief that the method hereinabove described of meeting the competition of lines not parties to the Atlantic Conference was employed to meet the competition of steamships of the Russian Volunteer Fleet and of the Russian-American Line operating and carrying steerage passengers between the port of New York and the port of Libau in Russia. It denies that said method was devised or employed to suppress the competition of said last mentioned lines or that such competition was crushed thereby, but it says that said method was devised and employed solely to protect the business of the defendant lines and not to effect the objects of any unlawful contract, combination or conspiracy whatever.

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14. This defendant denies each and every allegation contained in the paragraph of Subdivision "C" of Part "V" of the petition entitled "The Russian Volunteer Fleet is Driven out of Business," except that it admits that from March to June, 1908, the said Russian

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Volunteer Fleet frequently advertised its steamships to sail from the port of New York to the port of Libau in Russia, and advertised for and solicited persons to sail as third-class or steerage passengers on such ships, and that when such ships were so advertised to sail, said defendant lines selected a steamer and advertised the same to sail from the port of New York on or about the day that the ship of the Russian Volunteer Fleet was so advertised to sail and advertised a rate for steerage passengers on such steamer lower than the regular steerage rates of the defendant lines and low enough but not lower than necessary to meet the competition of said ship of the Russian Volunteer Fleet, and except that it admits that in the month of July, 1908, or shortly prior thereto, said Russian Volunteer Fleet withdrew its steamships from such service, and has ever since ceased to operate said line. This defendant says on information and belief that the steerage rates charged on said ships of the Russian Volunteer Fleet and on the steamers so selected by the defendant lines to meet their competition were so low that neither the Russian Volunteer Fleet nor any other line could derive any profit therefrom and that the business done at such rates resulted in loss.

642      15. This defendant says that in the year 1908 the business of transporting steerage passengers between the United States and Europe was greatly depressed. Upon information and belief, it says that the Russian Volunteer Fleet was in that year making low steerage rates, west and eastbound, in order to create traffic, but the movement of steerage passengers was so light that its voyages were conducted at a loss, as was also the case in that year with the voyages of the ships of the defendant lines. Upon information and belief, this defendant says that the withdrawal of the Rus-



sian Volunteer Fleet was occasioned partly by the small volume of traffic and partly by the entrance of the Russian-American Line as a competitor into the trade between Libau and New York, and by losses of the Russian Volunteer Fleet in no way due to any act or acts of the defendant lines or of any one thereof.

16. Upon information and belief, this defendant says that when the Russian Volunteer Fleet withdrew, the Russian-American Line took over and assumed its contracts for the carriage of steerage passengers under an arrangement between it and the Russian Volunteer Fleet, of the terms of which this defendant has no knowledge.

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17. This defendant believes, and therefore says that the withdrawal of the ships of the Russian Volunteer Fleet from the service between New York and Libau caused no detriment or loss to the public or to persons desiring to procure steerage transportation between New York and Libau.

18. Answering that portion of Subdivision C of Part V of the petition entitled "The Russian-American Line is Driven Out of Competition and Forced into the Unlawful Combination and Conspiracy," this defendant admits and says that from the month of March until the month of September, 1908, the Russian-American Line was engaged in operating its line of steamships from the port of New York to the port of Libau, in Russia, and carried thereon third-class or steerage passengers, and that frequently during said period, it advertised its steamships to sail from said port of New York, and advertised for and solicited persons to travel upon its ships as third-class or steerage passengers, and that in each such instance the defendant lines selected a steamer and advertised the

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same to sail at or about the same time as the ship of the Russian-American Line, and advertised a rate for steerage passengers on such steamer lower than the regular steerage rates of the defendant lines and low enough but not lower than necessary to meet the competition of said ship of the Russian-American Line. This defendant says that the steerage rates charged on said ships of the Russian-American Line and on the steamers so selected by the defendant lines to meet their competition were so low that neither the Russian-American Line, nor any other line could derive any profit therefrom and that the business done at such rates resulted in loss.

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It admits that at or about the time mentioned in the petition the Russian-American Line became a party to the Atlantic Conference and has since carried on its business under said contract dated Feb. 5, 1908, in so far as the same applies thereto. It denies any unfair or unlawful competition by the defendant lines with the Russian-American Line. By reason of the unremunerative rates charged this defendant believes that the Russian-American Line incurred financial loss in the conduct of its steerage traffic, but denies that the Russian-American Line sought admission to the Atlantic Conference in order to be permitted to continue in said business, or that since its admission to said Conference this defendant has been conducting its said business free from competition with the other defendant lines. It denies that so long as it was a party thereto the Atlantic Conference was an unlawful combination or conspiracy, or that the contract of February 5, 1908, was unlawful, or that the people of the United States suffered any loss or detriment therefrom or from any act of any of the defendants thereunder.

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19. Answering that portion of Subdivision C of Part V of the petition entitled "Unfair competition

against the Uranium Steamship Company," this defendant says it has no information as to whether the Uranium Steamship Company is a corporation organized and existing under the laws of Great Britain. It admits that about April 1, 1909, said company began to operate, and has ever since operated, a regular line of steamships under the name of the North West Transport Line between the ports of New York and Rotterdam, and began to carry and has ever since carried steerage passengers thereby between said ports without being a party to said contract of February 5, 1908. It says that the rates at which said Uranium Steamship Company advertised to carry steerage passengers were below a fair and reasonable rate for the service offered. It admits that the defendant lines met this competition in the same manner in which they had met the competition of the Russian Volunteer Fleet and of the Russian-American Line as hereinbefore described. It admits that in March, 1910, the aforesaid committee in New York was disbanded, and that from that time until July 15, 1910, when this defendant ceased to participate in the arrangement to use such steamers, the so-called "fighting steamers" were selected and their rates for steerage transportation were fixed by the defendant steamship lines in Europe. As to the manner in which such steamers have been selected and their rates have been fixed since July 15, 1910, it has no knowledge or information sufficient to form a belief. It denies that it has any knowledge or information sufficient to form a belief as to whether such rates are now or since March, 1910, have been put in force by notices sent out by the individual defendants to the agents throughout the United States for the sale of tickets for third-class steerage transportations on the defendant lines. It says that the measures taken by the defendant lines so long as it was a party to said arrangement for the

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353 purpose of meeting the competition of said North West Transport Line were lawful and necessary for the protection of the business of the defendant lines and were not adopted for the purpose of excluding said North West Transport Line from a participation in said traffic or of effectuating any restraint or monopoly of said traffic. It denies that said North West Transport Line so long as this defendant was a party to said arrangement was at any time prevented from obtaining a fair and reasonable share of said traffic and as to whether the said traffic which it so obtained was or was not secured at a financial loss this defendant denies that it has any knowledge or information sufficient to form a belief.

654 It denies on information and belief that the defendant steamship lines have agreed in pursuance of any unlawful combination or conspiracy that no one of them shall continue in its employ as agent for the sale of tickets over its line any person who shall act as agent for the sale of third-class or steerage tickets over any independent line in competition with said defendant lines, or that measures provided for thereunder are employed by the individual defendants within the United States or in the Southern District of New York on behalf of the defendant lines as a part of any illegal attack upon said North West Transport Line. This defendant says that long before said contract of February 5, 1908, was made, an agreement was entered into between some or all of the defendant lines and others that no one of the lines so agreeing would employ as agent for the sale of tickets over its line any person who should act for the sale of tickets over any line other than the lines so agreeing; that this agreement was made in self defense to guard against frauds by ticket agents in sacrificing the interests of their principals by cutting rates and diverting business from the lines employing them and by

deceiving and defrauding persons to whom they sold tickets and by committing other frauds upon the traveling public as well as upon their principals; that said agreement was and is valid and lawful and has promoted the public convenience and the honest conduct of the transatlantic steerage business.

20. This defendant denies each and every allegation contained in that portion of Subdivision C of Part V of the petition entitled "Excessive and arbitrary rates are charged by defendants for steerage transportation" in so far as said allegations apply to the time during which it was a party to the Atlantic Conference.

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21. Answering that paragraph of Subdivision C of Part V of the petition entitled "Penal enforcement of the terms of the unlawful contract," this defendant denies that so long as it was a party to said contract of February 5th, 1908, any of the parties thereto was subjected to any duress or constraint in conducting its steerage business, and refers to the terms of said contract for the particulars thereof.

22. Answering Part VI of the petition this defendant denies that so long as it was a party to said contract of February 5, 1908, the defendant steamship lines obtained or attempted to obtain a virtual or any monopoly of any part of the traffic of transporting steerage passengers in trade and commerce between the United States and foreign nations, and it denies that said contract was unlawful, or that it was or is a party to any unlawful contract, combination or conspiracy, or to any conspiracy whatever. It says that it has no knowledge or information sufficient to form a belief as to what per cent of the total third-class or steerage passenger traffic between Europe and North America was carried in ships belonging to the defend-

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ant steamship lines at the date of the filing of the petition herein.

23. Further answering this defendant says that the act of the Congress of the United States of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies" does not and never did apply to this defendant in the conduct of its business of transporting steerage passengers on its steamships between said Canadian ports and the port of Liverpool, England, no part of said business being carried on within the territorial limits of the United States.

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24. This defendant denies each and every allegation contained in the petition not hereinbefore specifically admitted. It denies that it has ever violated or attempted or intended to violate the Anti-Trust Act or any provision thereof. In as much as it has withdrawn, as aforesaid, from said agreement of February 5, 1908, and from said arrangement in regard to the use of so-called "fighting steamers" it respectfully submits that this Honorable Court is without jurisdiction to grant the relief prayed for in the petition or any part thereof or any other relief in the premises against this defendant, and it prays to be dismissed hence with its costs in this behalf incurred.

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SPOONER & COTTON,  
Solicitors for Canadian Pacific  
Railway Company.

JOHN C. SPOONER,  
JOSEPH P. COTTON, JR.,  
GEORGE RUBLEE,  
Of Counsel.

CANADIAN PACIFIC RAILWAY COMPANY,  
By

**Answer of Bryce J. Allan.**

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IN THE DISTRICT COURT OF THE UNITED  
STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK IN THE  
SECOND CIRCUIT.

THE UNITED STATES OF AMERICA,  
Petitioner,

against

HAMBURG - AMERIKANISCHE PAC-  
KETFAHRT-ACTIEN-GESELLSCH-  
AFT and others,

Defendants.

In Equity.

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The separate answer of the defendant Bryce J. Allan to the petition of the United States of America, filed herein on January 4th, 1911.

This defendant answering unto so much and such parts of said petition as he is advised it is material and necessary for him to make answer unto, says:

1. Answering Part I of the petition this defendant admits that the defendant steamship lines herein, except the Canadian Pacific Railway Company, are engaged in foreign trade and commerce as common carriers of passengers and freight, including third-class, or steerage passengers, between ports in the United States and ports in Europe, but upon information and belief he denies that they (except the Canadian Pacific Railway Company) are engaged as common carriers of passengers and freight between inland points in the United States and ports or inland points in Europe, Asia or Africa. In regard to the Canadian Pacific Railway Company, he believes that said company is

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not engaged as a common carrier of passengers and freight between ports in the United States and ports in Europe, and therefore denies that this is the fact, but he has no information, knowledge or belief as to whether said Canadian Pacific Railway Company is engaged as a common carrier of passengers and freight including third-class or steerage passengers, between inland points in the United States and ports and inland points in Europe, Asia and Africa. He denies, upon information and belief, that in respect to said commerce in which said defendant steamship lines are engaged, or otherwise, they are violating, or ever have violated, in any way any of the provisions of the Act of the Congress of the United States entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," approved July 2nd, 1890.

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2. Answering Part II of the petition he admits the allegations contained in paragraph 1.

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Answering paragraph 2 he admits that he is a resident of the State of Massachusetts, and is and for many years has been engaged in business under the firm name and style of H. & A. Allan, with an office and place of business at the City of Boston, in the State of Massachusetts. He denies that he has been or now is employed by the Allan Line in the capacity of general agent and manager of its business in the United States or that he has had or now has charge of the affairs in the United States of the Allan Line in connection with its business aforesaid. He admits and says that he is the manager of the business of the Allan Line in Massachusetts and that he represents himself and his said office, respectively, to be the person with whom and the place at which business may be transacted with the Allan Line in Massachusetts.

He denies, upon information and belief, each and every allegation contained in paragraph 24, except that



he admits that some of the defendant steamship lines are in some respects natural competitors.

Upon information and belief generally, but without information as to many of such allegations concerning the other defendants, he admits the allegations contained in paragraphs numbered 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23.

3. Answering Part III of the petition, he admits that the steerage traffic to and from Europe has been large, that the steamship companies engaged in carrying such traffic have extended their facilities for handling the same, and that the income from that description of traffic is an important part of their revenue, and except as to the allegations so admitted, he says that he has no knowledge, information or belief in regard to the allegations contained in said Part "III" of the petition.

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4. Answering Part IV of the petition he denies, upon information and belief, each and every allegation contained therein.

5. Answering paragraph 1 of Subdivision A of Part V of the petition, he admits, on information and belief, that on or about February 5th, 1908, at the City of London, England, the steamship lines mentioned in said paragraph entered into an agreement, a copy of which agreement is annexed to the petition and marked "Exhibit A." He believes such copy to be substantially correct, but for greater certainty craves leave to refer to the original thereof when the same shall be produced. He denies that said agreement was or is unlawful. He says that said agreement was and is lawful under the laws of England where it was made, and under the laws of Great Britain which govern the Allan Line and its steam-

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ships, and that it never was and is not in violation of the laws of the United States. He says that until the commencement of this suit he had no knowledge whatever of the existence of said contract.

671 6. He admits that the allegations contained in paragraphs numbered 2, 3, 4, 5, 6, 7, 8 and 9, of Subdivision A of Part V of the petition, in so far as they set forth the provisions of said agreement dated February 5th, 1908, but he denies the allegations contained in the petition in regard to the meaning, legal effect and intent of said agreement, and for greater certainty craves leave to refer to the original of said agreement when the same shall be produced.

7. Answering Subdivision B of Part V of the petition he denies that he has any knowledge or information sufficient to form a belief as to each and every allegation thereof.

8. Answering paragraph 1 of Subdivision C of Part V of the petition, he denies that he has any knowledge or information sufficient to form a belief as to each and every allegation thereof except that he denies that all free and natural competition between said lines has been or is eliminated.

672 9. Answering paragraph 2 of Subdivision C of Part V of the petition, he denies each and every allegation thereof.

10. Answering the first sentence of paragraph 3 of Subdivision C of Part V of the petition, he denies each and every allegation contained therein, except that he admits that he has received from his principal and, upon information and belief, that the agents of the other defendant lines in the United States have from time to time received orders and instructions from their respective principals in Europe, in respect

to the sailing of steamers and in respect to rates of passage and other business, and that he and they have complied with and carried out such orders and instructions.

11. He denies each and every allegation of that portion of subdivision C of Part V of the petition entitled "Agreement to destroy competition of independent lines."

12. Answering that portion of Subdivision C of Part V of the petition entitled "Arrangement to use so-called 'fighting steamers' to destroy competition," he denies that he has any knowledge or information sufficient to form a belief as to each and every allegation thereof.

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13. Answering that portion of Subdivision C of Part V of the petition entitled "Competitors are crushed," he denies that he has any knowledge or information sufficient to form a belief as to each and every allegation thereof.

14. Answering that portion of Subdivision C of Part V of the Petition entitled "The Russian volunteer fleet is driven out of business," he denies that he has any knowledge or information sufficient to form a belief as to each and every allegation thereof.

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15. Answering that portion of Subdivision C of Part V of the petition entitled "The Russian-American Line is driven out of competition and forced into unlawful combination and conspiracy," he denies that he has any knowledge or information sufficient to form a belief as to each and every allegation thereof.

16. Answering that portion of Subdivision C of Part V of the petition entitled "Unfair competition against the Uranium Steamship Company," he denies

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that he has any knowledge or information sufficient to form a belief as to each and every allegation thereof, except that he denies on information and belief that the defendant steamship lines have agreed in pursuance of any unlawful combination or conspiracy that no one of them shall continue in its employ as agent for the sale of tickets over its line any person who shall act as agent for the sale of third-class or steerage tickets over any independent line in competition with said defendant line or that measures provided for thereunder are employed by the individual defendants within the United States or in the Southern District of New York on behalf of the defendant lines as a part of any illegal attack upon said North West Transport Line.

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17. He denies each and every allegation contained in that portion of Subdivision C of Part V of the petition entitled "Excessive and arbitrary rates are charged by defendants for steerage transportation."

18. Answering that portion of Subdivision C of Part V of the petition entitled "Penal enforcement of the terms of the unlawful contract," he denies that he has any knowledge or information sufficient to form a belief as to each and every allegation thereof.

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19. Answering Part VI of the petition he denies that the defendant steamship lines have obtained or attempted to obtain a virtual or any monopoly of any part of the traffic of transporting steerage passengers in trade and commerce between the United States and foreign nations, and he denies that said contract was or is unlawful. He says that he has no knowledge or information sufficient to form a belief as to what percent of the total third-class or steerage passenger traffic between Europe and North America was carried

*Answer of Bryce J. Allan*

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in ships belonging to the defendant steamship lines at the date of the filing of the petition herein.

20. He denies each and every allegation contained in the petition and not hereinbefore specifically admitted. Having thus made full answer to all the matters and things contained in the petition, this defendant prays to be dismissed hence with his costs in this behalf incurred.

SPOONER & COTTON,

Solicitors for the defendant Bryce J. Allan.

JOHN C. SPOONER,

JOSEPH P. COTTON, JR.,

GEORGE RUBLEE,

Of Counsel.

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682 **The Separate Answer of the Defendant, The Cunard Steamship Company, Ltd., to the Petition of the United States of America, Filed Herein on January 4, 1911.**

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK, IN THE SECOND CIRCUIT.

683	<p>THE UNITED STATES OF AMERICA,  <div style="text-align: right;">Petitioner,</div> <div style="text-align: center;">against</div> </p>	}	In Equity.
	<p>HAMBURG-AMERIKANISCHE PAC-          KETFAHRT - ACTIEN - GESELL-          SCHAFT, and the CUNARD          STEAMSHIP COMPANY, LTD., im-          pleaded with others,  <div style="text-align: right;">Defendants.</div> </p>		

684 *The Separate Answer of the Defendant, the Cunard Steamship Company, Limited, to the Petition of the United States of America, filed herein on January 4, 1911.*

This defendant, answering unto so much and such parts of said petition as it is advised it is material and necessary for it to make answer unto, says:

I.

*Answering that portion of the petition numbered "I":*

1. It admits that it is a common carrier of passengers and freight between ports of the United States

and ports of Europe, but denies that it is a common carrier of passengers or freight between inland points or ports in the United States and inland points in Europe, Asia or Africa.

2. It denies that with respect to said commerce in which it is engaged, or otherwise, it is violating or ever has violated, in any way, any of the provisions of the Act of Congress of the United States, entitled: "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," approved July 2, 1890.

3. It says that it has no knowledge or information or belief as to the averments therein contained concerning the defendants other than this defendant and the defendant, Charles P. Sumner. 686

## II.

*Answering that portion of the petition numbered "II" and entitled "Description of defendants and the trade and commerce which they conduct":*

4. It says that it has no knowledge or information, saving by hearsay, as to any of the allegations contained in the subdivisions thereof numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22, and therefore leaves it to petitioner to make such proof in that behalf as it may be advised. 687

5. It admits that at the times mentioned in the petition it was, and now is, a corporation organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Ireland, with an agent in the City, County, State and Southern District of New York, and that at all such times it has been, and now is, engaged in trade and commerce be-

688      *Answer of The Cunard Steamship Company, Ltd.*

tween the United States of America and foreign nations, and that it operates regular lines of steamships between the terminal ports of New York and Boston in the United States and the terminal ports of Liverpool in England, Fiume in Hungary, and Trieste in Austria, and that it transports between, and to and from said ports upon its steamships, freight and passengers for hire.

689      6. It admits that at the times mentioned in the petition it maintained ticket agencies in certain cities in Europe and in the United States, at which it sold contracts for the transportation of freight and passengers on and by its steamships to and from the United States—that is to say, to and from the ports of Boston and New York in the United States and from and to certain ports in Europe, and it admits that in the case of all such passengers transported to the United States from said European ports, it has docked its steamships and landed such passengers at either the port of Boston or the port of New York, and in the case of such passengers transported by it to Europe, they have embarked upon its steamships at one or the other of said two last mentioned ports.

690      7. It denies that the defendant, Charles P. Sumner, is a resident of the City, County, State and Southern District of New York, and says that he is a resident of Elizabeth, in the State of New Jersey. It admits that said Charles P. Sumner is its general agent in the United States, with an office and place of business at No. 21 State Street, in the Borough of Manhattan, City and Southern District of New York, and that said defendant has charge, in the United States, of the business affairs of this defendant, and that he represents himself and his office, respectively, to be the person with whom, and the place at which, business may be transacted in the United States with the Cunard Line.



*Answer of The Cunard Steamship Company, Ltd.*

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8. It denies that said defendant, Charles P. Sumner, has been engaged in business as its general agent in the United States for many years, and says, on the contrary, that said Charles P. Sumner was first appointed its general agent in the United States on the first day of August, 1909.

9. It admits the averments contained in the subdivision thereof numbered 24 to the effect that the defendant steamship lines are natural competitors in the business of furnishing facilities for the aforesaid steerage passenger traffic, but only to the limited extent to which their steamers start from the same port on the same date and carry passengers to the same destination, but says that in other respects said defendant steamship lines are not natural competitors and, except as admitted, denies each and every averment in said subdivision 24, and says that this defendant has not entered into or been a party to any unlawful combination, contract or conspiracy, or to any conspiracy whatever, with any or all of the other defendants in said petition described, and denies that it has ever violated or attempted or intended to violate the Anti-Trust Act or any provision thereof.

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### III.

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*Answering that portion of the petition numbered "III" entitled: "Description of the trade and commerce which the defendants are monopolizing and attempting and conspiring to monopolize":*

10. This defendant admits that the traffic in carrying steerage passengers between Europe and the United States has at some periods been large, and that the steamship companies engaged in carrying such passengers have extended their facilities for

694      *Answer of The Cunard Steamship Company, Ltd.*

handling it, and that the income derived from that class of traffic constitutes an important part of their revenue. Except as admitted, this defendant says that it has no knowledge or information or belief as to the other averments therein set forth and leaves it to petitioner to make such proof in that behalf as it may be advised.

#### IV.

695      *Answering that portion of the petition numbered "IV" entitled "The combination and conspiracy in which the defendants are engaged":*

696      11. It denies that the defendants have been or are engaged in the Southern District of New York, in the United States, or elsewhere, in any combination or conspiracy, unlawful or otherwise, to restrain any part of the trade or commerce of the United States with foreign nations or to monopolize the same, or any part thereof, and it denies that said defendants are or have been engaged in the Southern District of New York, or elsewhere, in any combination or conspiracy to destroy all competition among and between themselves in the business of transporting third-class or steerage passengers by steamships between ports in the United States of America and ports in Europe, or that said defendants at any time have eliminated, suppressed or destroyed, or have attempted to eliminate, suppress or destroy, all or any competition in such traffic by any persons or corporations other than themselves, and this defendant denies each and every averment contained in said paragraph of said petition.

*Answer of The Cunard Steamship Company, Ltd.*

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## V.

*Answering that portion of the petition numbered "V" and entitled "The manner and means of accomplishing the unlawful combination and conspiracy":*

## A.

12. It admits that on or about February 5, 1908, at the City of London, in England, this defendant and the defendants, the Allan Line, the Anchor Line, the Hamburg-American Line, the North German Lloyd, the Holland-American Line, the Red Star Line, the International Mercantile Marine Company, and the Canadian Pacific Line, entered into a certain contract in writing; this defendant believes that Exhibit "A" of the petition is substantially a true copy thereof, but for greater certainty as to the terms thereof, this defendant craves leave to refer to the same when the same shall be produced, but this defendant denies that in entering into said contract it entered into any unlawful combination or conspiracy, or into any conspiracy whatever, or that said contract was or is unlawful, or that this defendant was or is a member of any unlawful combination or conspiracy, or any conspiracy whatever, as alleged in the petition; and this defendant says on the contrary that the making of said contract was and is lawful when and where made at the City of London, England, and that the making of said contract is not, and never was, a violation of the laws of the United States.

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13. This defendant admits that the terms of said contract of February 5, 1908, are of the general purport mentioned in the paragraphs numbered 2, 3, 4, 5, 6, 7, 8 and 9, as far as the said provisions are therein set forth, but this defendant in no sort admits the truth

700     *Answer of The Cunard Steamship Company, Ltd.*

of the averments of the petition as to the meaning, legal effect or intent of said contract, and for greater certainty craves leave to refer to said contract when the same shall be produced.

B.

*Answering that portion of the petition entitled "Defendant The Russian-American Line becomes a party to the illegal contract."*

701     14. It denies that the defendant, The Russian-American Line, was admitted to membership in the Atlantic Conference or to the provisions of said contract at a meeting held by the other defendant lines at the City of Cologne, Germany, on September 1st, 1909, or at any other time or place, and denies that the shares of all the lines, parties to said contract, were in any respect altered, but it admits that an agreement was made with The Russian-American Line with respect to the maintenance of its steerage traffic, subject to provisions, similar to the provisions of the said contract.

702     15. It admits that by the terms of said contract of February 5, 1908, said contract was to remain effective to February 28, 1911, and was to continue thereafter from year to year unless due notice should be given to the Secretary as in said agreement provided.

C.

*Answering that portion of the petition entitled "Acts pursuant to the unlawful agreement and to effect the purpose of the unlawful combination and conspiracy":*

16. This defendant admits that since the making of said contract of February 5, 1908, this defendant has

*Answer of The Cunard Steamship Company, Ltd.*

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duly made and rendered the accounts required to be made by said agreement, but says that this has been done only in Europe and not elsewhere. It admits that in cases where this defendant has been found to have carried more than its percental participation in the carriage of steerage passengers as defined by said contract, this defendant has made payment in Europe for such excess as required by the terms of the agreement and has otherwise complied in Europe with the agreement. But except as to acts performed in Europe in the financial management of the affairs of this defendant, it denies that it has carried on such portion of its business as related to the carriage of steerage passengers in accordance with any agreement with any other steamship company. This defendant denies that said contract was or is unlawful, or that all free or natural competition between said lines in the establishment of rates or in the furnishing of facilities for steerage traffic has been or is wholly eliminated or unreasonably limited, and says upon the contrary that this defendant and the other defendant lines now are, and at all times since the making of said contract of February 5, 1908, have been, engaged as competitors in the carrying of steerage passengers, and that this defendant and, as it is informed and believes, the other defendant steamship lines, at all times mentioned in the petition, were and now are doing each its utmost to secure as large an amount of said steerage traffic as it can get and handle without inaugurating a war or destructive competition in steerage rates.

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17. It denies that the successful accomplishment of the objects of said agreement necessarily involve the execution of the terms or scope or intent of said agreement throughout the United States or in the Southern District of New York, and it denies that since February 5, 1908, its agent in the United States, the de-

706      *Answer of The Cunard Steamship Company, Ltd.*

707      fendant, Charles P. Sumner, or his predecessor in that office, has been designated or established by it at his office or elsewhere in the United States, as its agent to carry out or make effective the terms, objects or intent of said agreement, or that said defendant, Charles P. Sumner, or his predecessor, has carried out or executed acts necessary for the successful accomplishment of said agreement; as to the defendants other than this defendant, and the defendant, Charles P. Sumner, this defendant has no knowledge, information or belief, and leaves it to the petitioner to make such proof in that behalf as it may be advised; but this defendant denies that said agreement was or is unlawful or that it thereby or otherwise entered into or became a party to any unlawful combination or conspiracy, or to any conspiracy whatever.

708      18. It denies that it ever instructed or ordered its agent, the defendant, Charles P. Sumner, or his predecessor, in respect to the accomplishment of the objects and purposes of said agreement, and this defendant says that from time to time it has sent instructions to the defendant, Charles P. Sumner, with respect to the rates to be charged upon its ships, and to other matters involving the conduct of its business and the operation of its ships and that said defendant, Charles P. Sumner, has complied with and carried out such instructions.

19. This defendant has no knowledge, information or belief as to whether the other individual defendants mentioned in the petition have ever received orders and instructions from their respective principals respecting said contract of February 5, 1908, or in respect to the accomplishment of the objects thereof, and leaves it to petitioner to make such proof in that behalf as it may be advised.

*Answering that portion of the petition entitled "Agreement to destroy competition of independent lines":*

20. It denies that the defendant steamship lines, at a meeting held March 25, 1908, or at any other time, agreed that they would act together to eliminate or destroy the competition of any or all persons or corporations that might then or thereafter operate lines of steamships or carry steerage passengers between Europe and the United States, in competition with all or any of the steamship lines in the traffic covered by said agreement, and further denies that said agreement was or is unlawful, or that it was or is a party to any unlawful combination or conspiracy, or to any conspiracy whatever. 710

21. This defendant says that at a meeting of the defendant lines held at the City of London, in England, on or about the 25th day of May, 1908, in order to meet the low rates which were then being quoted by a line of steamships, not party to the agreement, operating between New York and the Continent, it was arranged that one of the lines, party to the agreement, should quote low rates in competition with said outside line, but this defendant says, however, that said low rates have never been as low as the rate of the outside line, nor have the rates of any outside line been under-cut. This defendant further says that when any steamship company in the North Atlantic business has been willing to conform to the rules and regulations mentioned in said contract, and to the provisions thereof, and, in addition, has shown itself responsible and capable of governing its agents in a responsible and proper manner, it has been admitted to the conference, and to all the rights accruing under said agreement of February 5, 1908. 711

712      *Answer of The Cunard Steamship Company, Ltd.*

*Answering that portion of the petition entitled "Arrangement to use so-called 'fighting steamers' to destroy competition":*

22. This defendant denies (except as above specifically admitted) that it or any of its representatives or agents acted in any way at any time in the selection, control or operation of so-called "fighting steamers," or that at the direction of any committee, or otherwise, it reduced on any of its steamers the passage rate to meet outside competition. It says that no representative, official, employee, servant or agent of this defendant was ever appointed or acted in New York, or elsewhere in the United States, as a member of a committee, for and on behalf of the defendant lines, for the selection of so-called "fighting steamers" to sail eastbound from the port of New York to European ports. This defendant is informed and believes, and therefore says, that in no instance were the rates on any of the ships belonging to any of the defendant lines lowered beyond a point necessary to compete with the rates quoted by outside lines, and in no instance were the rates of outside lines under-cut. In no instance have the rates been lowered to a point as low as the rate of the competing outside line, and this defendant says that the lowering of rates aforesaid was not done pursuant to any unlawful combination or conspiracy, or to any conspiracy whatever.

*Answering that portion of the petition entitled "Competitors are crushed":*

23. This defendant denies that any unreasonable or unlawful method of competition was employed by this defendant or by the other defendant steamship lines to meet or suppress competition in steerage traffic by the Russian Volunteer Fleet or by the Russian-



*Answer of The Cunard Steamship Company, Ltd.* 715

American Line, operating between the port of New York and the port of Libau in Russia, and this defendant says that no instructions were given by it to its American representative or agent with regard to so-called "fighting steamers."

*Answering that portion of the petition entitled "The Russian Volunteer Fleet is driven out of business":*

24. This defendant admits that from March to June, 1908, the Russian Volunteer Fleet frequently advertised its steamships to sail from the port of New York to the port of Libau in Russia, and advertised for and solicited persons to sail as steerage passengers upon such ships, but this defendant is without knowledge, information or belief as to the equipment of the Russian Volunteer Fleet for handling such traffic and leaves it to petitioner to make such proof in that behalf as it may be advised. 716

25. This defendant says that no representative, official, employee, servant or agent of this defendant, ever acted as a member of any committee in the City of New York for the purpose of selecting so-called "fighting steamers," and that the rates on its ships were never reduced to meet the competition of said Russian Volunteer Fleet to any sum less than the rate advertised by the Russian Volunteer Fleet. This defendant has no knowledge or information or belief as to what measures may have been taken by other lines to meet the competition of said Russian Volunteer Fleet, and leaves it to petitioner to make such proof in that behalf as it may be advised. 717

26. This defendant denies that the Russian Volunteer Fleet withdrew its steamships from said service between the ports of New York and Libau in the

718 *Ansteer of The Cunard Steamship Company, Ltd.*

month of July, 1908, and says that said withdrawal took place in the month of June, 1908. It admits that since said withdrawal said line has ceased to operate its ships. This defendant further says that said withdrawal of the ships of the Russian Volunteer Fleet was not due or owing to any unfair or unlawful competition on the part of this defendant, or, upon information and belief, on the part of the other defendant lines.

719 27. This defendant says that the movement of immigration to the United States in the year 1908 was at a very low ebb. Upon information and belief it says that the Russian Volunteer Fleet was quoting low rates, both westbound and eastbound, in the hope of being able to secure enough passengers to make their voyages profitable, but the freight, cabin and steerage traffic was so poor at that time that said voyages were conducted at loss, as was also the case with the voyages of the ships of the defendant lines, and this defendant says, upon information and belief, that the withdrawal of the Russian Volunteer Fleet was occasioned both by the small amount of traffic and by the entry of the Russian-American Line as a competitor into the trade between Libau and New York, and by reasonable and natural economic causes.

720 28. Upon information and belief this defendant says that upon the withdrawal of the Russian Volunteer Fleet its contracts for the carriage of steerage passengers were taken over and assumed by the Russian-American Line under and pursuant to an arrangement between said Russian-American Line and the Russian Volunteer Fleet, of the particular terms of which arrangement this defendant has no knowledge.

29. This defendant believes, and therefore says, that the withdrawal of the ships of the Russian Vol-

*Answer of The Cunard Steamship Company, Ltd.*

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unter Fleet from the service between New York and Russia resulted in no detriment or loss to the public or to persons desiring to procure steerage transportation between New York and Russia.

*Answering that portion of the petition entitled "The Russian-American Line is driven out of competition and forced into the unlawful combination and conspiracy":*

30. This defendant admits that from March to September, 1908, the defendant, the Russian-American Line, was engaged in operating its line of steamships from the port of New York to the port of Libau in Russia and in carrying thereon steerage passengers in competition, to a limited extent, with some of the other defendant steamship lines, but it does not know the extent of such competition. It admits that frequently during the said period the Russian-American Line advertised its steamships to sail from the port of New York, and advertised for and solicited persons to travel upon its ships as third-class or steerage passengers, but this defendant denies that the rates on any of its ships were ever lowered to meet or undercut the rates on the ships of the Russian-American Line, or that any of its representatives, officials, employees, servants or agents ever acted in the United States, upon any committee to select a so-called "fighting steamer," to compete with the ships of said Russian-American Line.

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31. This defendant has no knowledge or information as to what measures may have been taken by other lines to meet the competition of said Russian-American Line and leaves it to petitioner to make such proof in that behalf as it may be advised.

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*Answer of The Cunard Steamship Company, Ltd.*

32. This defendant is without knowledge or information as to whether the Russian American Line, in the year 1908, incurred any financial loss in the conduct of its third-class or steerage traffic. It denies that in the month of September, 1908, the Russian-American Line became a party to the contract of February 5, 1908, or to the Atlantic Conference, or that it has since conducted its trade or commerce or business free from competition with the other defendant lines. It admits that an agreement was made with the Russian-American Line with respect to the maintenance of its steerage traffic.

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*Answering that portion of the petition entitled "Unfair competition against the Uranium Steamship Company:"*

33. This defendant is without knowledge or information as to whether the Uranium Steamship Company, Limited, is a corporation organized under and by virtue of the laws of the United Kingdom of Great Britain. It admits that certain steamships run under the name of the Northwest Transport Line, which, it is informed, had earlier been run under the name of the New York and Continental Steamship Company and are now run under name of Uranium Steamship Company, began to operate about April 1st, 1909, and have since operated between the ports of New York and Rotterdam, and ever since that date have carried steerage passengers. It admits that the Uranium Steamship Company, Limited, is not and never has been a party to the contract of February 5, 1908.

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34. This defendant denies that any of its steamships was ever selected as a "fighting steamer" to carry third-class or steerage passengers at cut rates against the steamships of said Northwest Transport

Line. It says that it has never issued any instructions to any of its agents or representatives in America in connection with said Northwest Transport Line.

35. This defendant is without knowledge or information as to what other companies or individuals may have done in order to compete with the Northwest Transport Line, and leaves it to petitioner to make such proof in that behalf as it may be advised.

36. It admits that the terms of said contract of February 5, 1908, have been enforced and put into effect since March, 1910, by the defendant lines in Europe, but this defendant denies that any of the methods adopted were unlawful or were aimed at the elimination of competition by the Northwest Transport Line with them in the carriage of steerage passengers. This defendant denies that it has ever issued any orders or instructions to any of its agents or representatives in the United States with reference to the Northwest Transport Line or to "fighting steamers" or to competition with said Northwest Transport Line.

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37. This defendant has no knowledge or information as to whether the Northwest Transport Line has at all or any times since the institution of its service, conducted its steerage traffic at a financial loss, but it denies that said Northwest Transport Line has been prevented by any illegal or oppressive measures adopted in concert or otherwise by the defendant steamship lines or by this defendant, for the purpose of excluding said Northwest Transport Line from a participation in said traffic, or for the purpose of effectuating any restraint or monopoly of the said traffic, from obtaining a fair and reasonable share of said traffic.

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730      *Answer of The Cunard Steamship Company, Ltd.*

38. This defendant says that it has in some cases, declined to employ certain persons as agents for the sale of its tickets over its line who were agents for the sale of steerage tickets of certain competing lines, but this defendant denies that such action on its part is other than a necessary, usual and lawful business measure on its part, or that said action is taken in pursuance of any unlawful combination or conspiracy or of any conspiracy whatever, or in pursuance of the contract of February 5, 1908.

731      *Answering that portion of the petition entitled "Excessive and arbitrary rates are charged by defendants for steerage transportation:"*

39. This defendant denies that at all or any times since the adoption of the contract of February 5, 1908, any or all of the defendant steamship lines have arbitrarily fixed their rates for steerage transportation, so as to bring about any arbitrary division of traffic, or so as to maintain rates at any artificial level, or that they have deprived, or are depriving, the public of the benefit of any normal division of traffic between the persons or corporations engaged therein, or of any benefits whatever. This defendant  
732      denies that unregulated competition ever has, or ever will or could produce superior facilities to those at present enjoyed by the traveling public, or that lower rates ever have or could result permanently from such unregulated competition. This defendant says that its rates have been at all times, and now are, reasonable.

40. This defendant says that at no time since the establishment of steam navigation have steerage passengers entering and leaving the United States, been able to obtain better transportation and accommodations at less cost than since the agreement of February 5, 1908. Steerage rates have not since that

date been increased over the amount of such rates prior thereto, sufficiently to compensate the carriers for the diminution in the purchasing power of money which has occurred during the same period, or to compensate for the increased facilities and accommodations which are offered or the increased cost of operation. Since February 5, 1908, competition between the parties to the contract of that date, in increasing the size of their steamers and in improving the conditions of the service, has been more active than at any previous time. The largest vessels afloat are those owned and operated by the defendant lines in their passenger service between Europe and the United States. Since the making of the contract of February 5, 1908, it has happened ten or more times that one or other of the defendant lines has put in service, or started the construction of, a steamer larger than any of its vessels then in service. The third-class accommodations now provided by this defendant and by some of the other defendant lines are in many respects equal to the first-class accommodations existing twenty-five years ago. The absence of any agreement of the sort contemplated by the contract of February 5, 1908, would invite rate wars and destructive competition in the steerage business. It is only when the lines are living at peace with one another, and not spending their earnings in destructive competition, that they can make improvements in accommodations and service and give the public that benefit which the public is now receiving. Not only have rate wars been followed by serious consequences to the steamship companies themselves, but they are inimical to the interest of the countries between which the passengers are carried.

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41. The carrying trade of the ocean is altogether different from the carrying trade on land by rail. On

736 *Answer of The Cunard Steamship Company, Ltd.*

land, it is necessary to go to considerable initial expense in obtaining a franchise, condemning a route, purchasing land, laying tracks and providing rolling stock, while on the sea, the road is open to all who wish to take a part and compete for business. As a necessary consequence, a large company which has through a long period of years devoted great effort and expended enormous sums in building up a trade, building and equipping its steamers and training its officers, crews and agents, is at the mercy of any more or less irresponsible person who may enter the trade with one or two cheaply equipped steamers, 737 manned by inexperienced officers and undisciplined crews, and may have its trade taken away by destructive and speculative competition. The large company, in defense, has to make considerable sacrifice and lose money to retain its trade, while ultimately its competitor may be compelled to withdraw from the trade after suffering loss himself, and bringing the trade he has entered into a demoralized condition. Under such circumstances, the accommodations and facilities offered the public are bound to deteriorate. A rate war or destructive competition may result temporarily in lower rates, but ultimately it will result in the survival of only the largest and strongest companies, in a practical monopoly of the traffic in a few hands, and, finally, in higher rates than are maintained under such reasonable regulation of competition as the contract of February 5, 1908, provides. 739

42. Within recent years, but prior to the contract of February 5, 1908, such destructive competition has actually driven out of business several steamship companies which had long operated between Europe and the port of New York, carrying steerage passengers. Effective rate wars on land can be conducted only by railroads, the physical location of whose tracks en-



ables them to compete, but on the sea any steamer may compete with any other steamer on any route, and weaker lines may be totally driven out of business by rate wars, which ultimately result in the concentration of the business in the hands of a very few, and in impairment of service. In rate wars, on the land, the railroads will have certain local and non-competitive business on which they may survive, in spite of the war, but a rate war on the ocean takes from the weaker line all its business, and the public suffers accordingly.

43. Most of the westbound steerage passengers carried by the defendant lines are immigrants to the United States, and practically all the relations between each immigrant and the line by which he comes, from the time when the immigrant first applies for passage until he is landed in the United States, and permanently accepted as a proper resident, are now regulated by the United States immigration laws. In recent years, these laws have been greatly extended, particularly as regards the selection and acceptance by the steamship company of only such passengers as are admissible. Before accepting an alien as a passenger, the steamship company is required carefully to investigate the circumstances under which he has immigrated, his physical and mental condition and history, his moral record, his personal and political opinions and his ability to care for himself. Under heavy penalties, the steamship lines are held responsible for mistakes made by their agents in Europe, in accepting as passengers, persons who, upon the completion of the voyage, are found, on examination, to have deceived the steamship company in reference to their admissibility as immigrants. Under the immigration laws, steamship companies are made responsible for the expense of returning all immigrants ultimately found

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742 *Answer of The Cunard Steamship Company, Ltd.*

to have entered the United States in violation of law. The responsibilities and expenses imposed on the steamship companies by these laws may continue for three years from the date of landing, in case of all aliens, and in case of some, may continue as long as the alien lives in the United States. For the purpose of complying with these immigration laws of the United States, this defendant has, during recent years, maintained a careful and elaborate system for the education and supervision of persons who sell its steerage tickets in Europe. It has, also, at the principal ports at which its passengers embark, maintained, or arranged for the maintenance of places of abode for detaining immigrants and their families, so as to permit a continued system of medical inspection before such immigrants were permitted to embark. This system for the education and regulation of ticket agents and for the investigation of the records and physical condition of the immigrants before embarkation has caused this defendant great expense and much study and labor, based on long continued experience in the business, and this defendant says that it is practically impossible for a steamship company to comply with the immigration laws of the United States unless it maintains a careful system for the selection and inspection of applicants for steerage passage, and that a proper system to accomplish those purposes cannot be maintained by a steamship company unless its rates are relatively stable and are a reasonable compensation for its services to the passenger and to the public.

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44. The absence of any such reasonable regulation of steerage traffic as is provided by the contract of February 5, 1908, has led in the past, and would necessarily lead, at short intervals, in the future, to destructive competition and rate wars, and rates are

then so far reduced as to attract as immigrants to the United States great numbers of those who are too poor to pay the usual rate. No degree of care will suffice to protect a steamship company or the officers of the United States Bureau of Immigration against the deceptions frequently practiced by that class of immigrants, and a war in steerage rates necessarily results in bringing into the United States great numbers of persons who are not able to support themselves in Europe and who, ultimately, prove unable to support themselves in the United States, although both the officers of the steamship companies and the officers of the United States Bureau of Immigration are unable to detect the fact that the immigration laws of the United States are being violated.

746

45. This defendant and the other defendant lines render an important service to the public and by reason of this, are subject to many requirements of statute regulating the conditions under which they transport passengers, particularly steerage passengers. The statutes of the United States and of Great Britain provide, with much particularity, as to the care and maintenance of steerage passengers, the conditions under which they may be carried, their medical attendance, and the condition of their accommodation. The proper observance of these regulations, and the proper care of the safety and comfort of passengers, entail care and increasing expense on this defendant and on the other defendant lines, and the responsibilities of this defendant and of the other defendant lines to the public cannot be fulfilled unless stable rates can be maintained which will afford a reasonable compensation for the service.

747

46. In the absence of international agreement or treaty on the subject, there is no regulating authority which can authorize the establishment and maintenance

748      *Answer of The Cunard Steamship Company, Ltd.*

of reasonable, stable and equitable rates, and in order to maintain their services to the public on a permanent basis, and with security and comfort to their passengers, this defendant and the other defendant lines have been forced to contract with one another as has been done by the agreement of February 5, 1908, for the maintenance of equitable, reasonable and stable rates, and this defendant says that the making of said agreement and the acts of this defendant and of the other defendant lines, performed in carrying out said agreement, have been and are a benefit to the people of the United States, and have been in accordance with the policy of the United States in respect to the carriage of passengers on the sea, and particularly in respect to the immigration of aliens to the United States. And this defendant says that it is informed and believes that there now exists, and for many years has existed, to the knowledge of the petitioner, and of the officers of its Department of Justice, a pool or combination of railroads operating within the territory of the United States, for the purpose of the regulation and division of the business of carrying immigrants westward after their arrival at the port of New York, and that such combination or pool has been officially examined by the United States Interstate Commerce Commission and has not been ordered to be dissolved by said Commission.

749  
750      47. Since the making of said agreement of February 5, 1908, and under the operation of that agreement, the compensation received by this defendant for the carriage of steerage passengers has not been more than a moderate, just and reasonable compensation for the expenses incurred and the service rendered in such carriage. The dividends paid to the stockholders of this company since the making of said agreement of February 5, 1908, have not averaged more than two and three-quarters per cent annually.

*Answer of The Cunard Steamship Company, Ltd.*

751

48. This defendant therefore avers that the agreement of February 5, 1908, is not, and does not, create or tend to create, an undue, unreasonable or unlawful restraint of trade or commerce, nor does it create or tend to create a monopoly or attempt or tend to do so.

*Answering that portion of the petition entitled "Penal enforcement of the terms of the unlawful contract:"*

49. This defendant denies that since the agreement of February 5, 1908, any duress or constraint has been put upon any of the parties to said agreement with reference to the conduct of its steerage business and refers to the terms of said agreement for particulars thereof.

752

## VI.

*Answering that portion of the petition entitled "Monopoly resulting from conspiracy."*

50. This defendant denies that the defendant steamship lines have obtained or attempted or intended to obtain a virtual or any monopoly of any part of the traffic of transporting steerage passengers between the United States and foreign nations, and it denies that said contract was or is unlawful, or that it was or is a party to any unlawful contract, combination or conspiracy, or to any conspiracy whatever. It admits that at the date of the filing of said petition, about ninety per cent of the total third-class or steerage traffic between Europe and North America was carried in ships belonging to the defendant steamship lines, but it denies that seventy-five per cent, or any per cent of such total steerage traffic is restrained or limited or unreasonably regulated by means of said contract of February 5, 1908, and says that the regulation of said traffic provided for in the contract of February 5, 1908, is reasonable and lawful.

753

754      *Answer of The Cunard Steamship Company, Ltd.*

VII.

755      51. This defendant now having fully answered the petition herein, denies all and all manner of unlawful contract, combination, conspiracy, monopolizing or attempt or intent to monopolize, and all manner of misdoing of every kind wherewith it is by the said petition charged, without this, that there is any other matter, cause or thing in said petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true to the knowledge or belief of this defendant; all which matters and thing, this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed, with its costs and charges in this behalf most wrongfully sustained.

LORD, DAY & LORD,  
*Solicitors for the Defendant,*  
*The Cunard Steamship Company,*  
*Limited,*  
 No. 49 Wall Street,  
 New York City,  
 New York.

756      LUCIUS H. BEERS,  
 ALLAN B. A. BRADLEY,  
*Of Counsel.*

THE CUNARD STEAMSHIP COM-  
 PANY, LIMITED,  
 By A. A. Booth.  
 T. Royden.

Attest:  
 W. Dranfield,  
*Secretary.*

(Seal of The Cunard Steam-  
 ship Company, Ltd.)

*Answer of The Cunard Steamship Company, Ltd.*

757

Kingdom of Great Britain, ss:  
City of Liverpool,

The answer of the defendant, The Cunard Steamship Company, Limited, was taken this 23rd day of March, 1912, before George Michael Magee, the subscriber, a Notary Public, duly authorized by Royal Authority, residing and practising at Liverpool aforesaid, under the common seal of the said The Cunard Steamship Company, Limited, as by its common seal thereto affixed appears.

GEO. M. MAGEE,  
*Notary Public,*  
Liverpool.

758

(Notarial Seal. 1 Shilling  
Stamp, 23/3/12)

Kingdom of Great Britain and Ireland, }  
County of Lancaster, City of Liverpool, } ss:  
Consulate of the United States of America, }

I, the undersigned Deputy Counsel of the United States of America, for the port of Liverpool, England, do certify and make known to whom these presents shall come, that the signature Geo. M. Magee to the annexed Certificate subscribed is genuine. That the said Geo. M. Magee is a Notary Public of respectability, doing business in Liverpool, England, and that to the said Certificate, as signed, in my opinion, full faith and credit are due.

759

Given under my Hand and Seal of Office in Liverpool this 23rd day of March and year of our Lord, One thousand nine hundred and twelve.

WM. PIERCE,  
*Deputy Consul of the United States of  
America, Liverpool, England.*

Not'l and Mis. Serv's. 31/44.  
No. 192 \$2=8/3.

(American Consular Service,  
\$2 Fee Stamp.)

(American Consulate, 23 Mar. 1912.

Liverpool, England.)

760 **The Separate Answer of the Defendant, Charles P. Sumner, to the Petition of the United States of America, filed herein on January 4, 1911.**

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK,

In the Second Circuit.

761	THE UNITED STATES OF AMERICA,	}	In Equity.
	Petitioner,		
	against		
	HAMBURG-AMERIKANISCHE PACK- ETFAHRT - ACTIEN - GESELL- SCHAFT, and CHARLES P. SUM- NER, impleaded with others,		
	Defendants.		

This defendant, answering under so much and such parts of said petition as he is advised it is material and necessary for him to make answer unto, says:

762 I. I deny that I am violating or ever have in any way violated, or attempted or intended to violate, any of the provisions of the Act of the Congress of the United States, entitled: "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," approved July 2, 1890, or that I am now doing, or ever have done, anything respecting the matters set forth in the petition which was not within my legal right to do. I aver that I am not amenable to the jurisdiction of the United States, or to punishment by its laws, by reason of the dealings or matters set forth in the petition.



II. I was first appointed general agent in the United States of the defendant, the Cunard Steamship Company, Limited, on the first day of August, 1909. I have but little, if any, personal knowledge with reference to the averments of the petition so far as the same relate to matters charged to have occurred prior to August first, 1909.

III. I have no knowledge or information respecting the acts of the other defendants, saving by hearsay. I have heard nothing that leads me to believe that the other defendants have violated or intended to violate said Act of Congress, as alleged in the petition. 764

IV. I am a resident of Elizabeth, New Jersey, and I admit that since August first, 1909, I have been engaged in business as the general agent in the United States of the Cunard Line, with an office and place of business at No. 21 State Street in the Borough of Manhattan, City and Southern District of New York, and that I have charge of the affairs in the United States of the Cunard Line, and represent myself and my office, respectively, to be the person with whom, and the place at which, business may be transacted in the United States with the Cunard Line.

V. I believe that the contract annexed to the petition as "Exhibit A" is substantially a true copy of a contract entered into in London, England, on February 5, 1908, by the defendant steamship companies whose names are signed thereto, but I have never seen said contract and had no part in the making of it. 765

VI. I deny that I am designated by the Cunard Line as agent for it to carry out and make effective in the United States the terms, objects or intent of said contract or of any unlawful agreement, combination or conspiracy or of any conspiracy whatever.

VII. I deny that since my appointment as aforesaid I have, to my knowledge, carried out or executed acts necessary for the successful accomplishment of any unlawful combination or conspiracy or of any conspiracy whatever. I have never, to my knowledge, received orders or instructions from the Cunard Line in respect to the accomplishment of the objects or purposes of any unlawful combination or conspiracy or of any conspiracy whatever.

767 VIII. From time to time I have received instructions from the Cunard Line with respect to the rates to be charged upon its ships and with respect to other matters involving the conduct of its business and the operation of its ships, and I have complied with and carried out such instructions; I have never acted as a representative of the Cunard Line, or of any other line, upon any committee in New York or elsewhere to select, control or operate so-called "fighting steamers" or to regulate, fix or control the rates to be charged steerage passengers upon the ships of any of the defendant lines.

768 IX. None of the ships of the defendant, the Cunard Steamship Company, Limited, sailing from any port of the United States, was, since August first, 1909, or, so far as I am informed, and to the best of my belief, at any time prior thereto, selected by any committee or otherwise as a so-called "fighting steamer."

X. I have been instructed by the Cunard Steamship Company, Limited, not to employ as agents for the sale of its tickets certain persons who act as agents for the sale of steerage tickets of certain competing lines, and I have carried out those instructions, but I do not believe that such action is other than a usual, necessary and lawful business measure on the part of the defendant, the Cunard Steamship Company, Lim-

*Answer of Charles P. Sumner*

769

ited, or that such action is taken in pursuance of any unlawful agreement, combination or conspiracy or of any conspiracy whatever.

XI. I deny that I have ever violated or attempted or intended to violate the Anti-Trust Act or any provision thereof, and I humbly pray to be hence dismissed with my costs and charges in this behalf most wrongfully sustained.

CHARLES P. SUMNER.

LORD, DAY & LORD,

Solicitors for Defendant,

Charles P. Sumner.

770

LUCIUS H. BEERS,

ALLAN B. A. BRADLEY,

Of Counsel.

United States of America,  
Southern District of New York, } ss:  
County of New York,

Charles P. Sumner, being duly sworn, says that the facts stated in the foregoing answer of his own knowledge are true, and that those stated upon information and belief he believes to be true.

CHAS. P. SUMNER.

Sworn to and subscribed before me  
this 1st day of April, 1912.

771

Allen E. Foster,

Notary Public,

New York County, No. 120.

(Notarial Seal.)

- 772 **The Separate Answer of the Defendant, Russian East Asiatic Steamship Company, Limited (Russian-American Line) to the Petition of the United States of America, filed herein on January 4th, 1912.**

IN THE UNITED STATES CIRCUIT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

773	<p>THE UNITED STATES OF AMERICA,          Petitioner,          against</p> <p>HAMBURG-AMERIKANISCHE - PAC-          KET - FAHRT - ACTIEN - GESELL-          SCHAFT, THE ALLAN LINE          STEAMSHIP COMPANY, LIMITED,          RUSSIAN EAST ASIATIC STEAM-          SHIP COMPANY, LIMITED (Rus-          sian American Line), impleaded          with others,</p> <p style="text-align: right;">Defendants.</p>	}	In Equity.
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- 774 The separate answer of the defendant, Russian East Asiatic Steamship Company, Limited, to the petition of the United States of America, filed herein.

This defendant, Russian East Asiatic Steamship Company, Limited, now and at all times hereafter having and reserving unto itself all manner of benefit and advantage of exception to the many manifest errors, uncertainties and insufficiencies in said petition contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, says:

## I.

As to all matters and things alleged in any of the paragraphs of said petition to have taken place on or before the 1st day of September, 1909, the day on which it is charged with becoming a party to the alleged illegal agreement, this defendant for answer thereunto says, that it has no knowledge of the matters and things alleged, and does not understand that it is alleged in said petition that this defendant was in any manner connected with, or interested in, the various transactions alleged in said petition to have taken place prior to September 1st, 1909, but if it is intended to charge this defendant with knowledge thereof, or participation therein, any knowledge thereof, or participation therein is specifically denied. 776

## II.

As to the other matters and things alleged in any of the paragraphs of the petition, this defendant, upon information and belief, denies the same, except that it admits that it is a joint stock company whose articles of association have been approved by His Imperial Majesty the Emperor of Russia, and that it is engaged in the carriage of Russian Imperial mail, passengers and freight between the ports of Libau and New York; and that Alexander E. Johnson and Max Straus are its passenger agents. 777

The Russian East Asiatic Steamship Company, Limited, further admits that on or about the 1st day of September, 1909, it entered into an arrangement with certain other steamship companies, but denies that the terms of said agreement are properly set forth in the petition, and denies specifically each and every allegation of wrongful intent or wrong doing, so far as such allegations of wrongful intent or wrong doing relate or are intended to relate to or affect this defendant.

778 *Answer of Russian East Asiatic Steamship Co., Ltd.*

### III.

Further answering the petition, the Russian East Asiatic Steamship Company alleges that it is engaged in the operation of a line of steamers between the port of New York and the port of Libau in Russia; and that it is independently operating said line without the aid or co-operation of any of the other defendants or in conjunction with them.

### IV.

779 Further answering the petition, it alleges that prior to the peace between the Empire of Russia and the Empire of Japan, executed in the year 1905, at the City of Portsmouth, in the State of New Hampshire, it operated a line of steamships between ports in Russia and the Far East, more particularly the port of Vladivostock; that by reason of the changed conditions resulting from said peace it became necessary to find a new and profitable trade for the employment of its vessels then engaged in the Far Eastern trade; that the said vessels were not built especially for the Trans-Atlantic trade and the defendant had no experience in said trade; that the Russian Imperial Volunteer Fleet was also engaged in the Far Eastern trade, and that it likewise was obliged to seek a new trade for the employment of its vessels.

780

At the time aforementioned there never had been any regular direct communication or line of steamers maintained between the United States and the Empire of Russia; that mail, passengers and freight to be transported between the said countries were obliged to travel through other countries in order to reach their destination; that the trade between said countries was and is large; and the natural resources of the two nations enormous; that the traffic between the

said countries had become accustomed to a well defined means of communication; and that it was necessary and essential for the defendant in order to institute and make said new line successful, to make low and non-remunerative rates. In addition thereto the defendant in instituting a regular line was experimenting, and naturally did not desire to invest large sums of money in new and specially fitted steamers; it, therefore, fitted its steamers for the Trans-Atlantic trade, and while said steamers were seaworthy, they were not modern, and were not in a position to compete successfully with modern steamers and with established lines unless substantial concessions were made by the defendant.

782

The defendant further alleges that the peasant and artisan of Europe, as denominated in the petition, are clannish, and had become accustomed to established routes of travel, and, therefore, although furnished with a more direct method of communication, did not readily change from their accustomed route.

The defendant further alleges that by reason of the aforesaid facts, in the commencement of its service it did lose money, but denies that said fact forced it into any conference or agreement.

The defendant admits that since it instituted its line it has increased its rates, but alleges that said increase was due to the fact that the Russian Imperial Volunteer Fleet discontinued its service, and by reason of the fact that it became apparent that the traffic between the United States and the Empire of Russia would support the line, and to the fact that passengers and freight became accustomed to a direct method of communication and transportation provided by the defendant.

783

By reason of the aforesaid facts the defendant, therefore, commenced to build and did build steamers especially fitted for the trade, which steamers, while

784 *Answer of Russian East Asiatic Steamship Co., Ltd.*

not ocean leviathans, are equipped in every respect as efficiently as the Titanic or the Mauretania. The defendant further alleges that when traffic became accustomed to move over its line it was enabled to increase its rates, but denies that it has increased its rates in proportion to the increase in facilities and accommodations, or beyond what is essential for it to pay its expenses and a reasonable return on the capital invested.

V.

- 785 The defendant expressly denies that the Russian Imperial Volunteer Fleet was forced out of the trade by reason of any combination or conference, but alleges that said Russian Imperial Volunteer Fleet voluntarily withdrew from maintaining its service.

VI.

- 786 The defendant further alleges that it maintains vessels of modern build, with accommodations especially fitted and in other respects especially equipped for the maintenance of a regular line of steamers between the Empire of Russia and the United States of America, and that it actively competes with all the defendants named in the petition, for passengers and freight, and that to be successful in such competition it is required continuously to increase and improve its service, and to invest large sums of money in new steamers, wharves and other equipment.

Further answering said petition, this defendant says that if there is any other matter or thing in said petition contained, material or necessary for this defendant to make answer unto, and not herein well and sufficiently answered, traversed or denied, that the same is not true, and it is hereby specifically denied,



*Answer of Russian East Asiatic Steamship Co., Ltd.* 787

all of which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this cause most unjustly sustained.

THE RUSSIAN EAST ASIATIC  
STEAMSHIP CO., LTD.,

BENHAM & BOYESEN,

by Max Normann,

General Agents.

RALPH JAMES M. BULLOWA,

Solicitor for Defendant,

21 State Street,

Borough of Manhattan,

City of New York.

788

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- 790 **The Separate Answer of the Defendants Alexander E. Johnson and Max Straus, Copartners Doing Business Under the Firm Name of A. E. Johnson & Co., to the Petition of the United States of America, filed herein on January 4th, 1912.**

IN THE UNITED STATES CIRCUIT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

- 791 THE UNITED STATES OF AMERICA,  
Petitioner,  
against

HAMBURG-AMERIKANISCHE - PACKET - FAHRT - ACTIEN - GESELLSCHAFT, THE ALLAN LINE STEAMSHIP COMPANY, LIMITED, ALEXANDER E. JOHNSON and MAX STRAUS, copartners doing business under the firm name of A. E. JOHNSON & COMPANY, impleaded with others,  
Defendants.

In Equity.

792

The separate answer of the defendants Alexander E. Johnson and Max Straus, copartners doing business under the firm name of A. E. Johnson & Company, to the petition of the United States of America filed herein.

These defendants, Alexander E. Johnson and Max Straus, now and at all times hereinafter saving and reserving unto themselves all manner of benefit and advantage of exception to the many manifest errors, uncertainties and insufficiencies in said petition contained, for answer thereunto, or unto so much and

*Answer of Alexander E. Johnson and Max Straus* 793

such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, say:

I.

As to all matters and things alleged in any of the paragraphs of said petition to have taken place on or before the 1st day of September, 1909, the day on which it is charged that the Russian East Asiatic Steamship Company, Limited, became a party to the alleged illegal agreement, these defendants for answer thereunto say that they have no knowledge of the matters and things alleged, and do not understand that it is alleged in said petition, that these defendants were in any manner connected with, or interested in the various transactions alleged in said petition to have taken place prior to September 1st, 1909, but if it is intended to charge these defendants with knowledge thereof, or participation therein, any knowledge thereof, or participation therein is specifically denied. 794

II.

As to the other matters and things alleged in any of the paragraphs of the petition, these defendants, upon information and belief, deny the same, except that they admit that the Russian East Asiatic Steamship Company, Limited, is a joint stock company whose articles of association have been approved by his Imperial Majesty the Emperor of Russia, and that the said Russian East Asiatic Steamship Company, Limited, is engaged in the transportation and carriage of mail, passengers and freight between the ports of Libau and New York, and other ports; and that they are its passenger agents, and not its general agents in 795

796     *Answer of Alexander E. Johnson and Max Straus*

the United States, and in general charge of its affairs and business with the United States, as alleged in said petition.

## III.

These defendants further say that they have no knowledge or information regarding the alleged agreement or participation therein of the Russian East Asiatic Steamship Company, Limited, as alleged in said petition, and therefore deny said allegations.

797

## IV.

Further answering said petition, these defendants say that if there is any other matter or thing in said petition contained, material or necessary for these defendants to make answer unto, and not herein well and sufficiently answered, traversed or denied, that the same is not true, and it is hereby specifically denied, all of which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this cause most unjustly sustained.

798

A. E. JOHNSON &amp; CO.

By MAX STRAUS.

RALPH JAMES M. BULLOWA,  
Solicitor for the Defendants,  
Alexander E. Johnson and Max Straus,  
Office and Post Office Address,  
21 State Street,  
Borough of Manhattan,  
City of New York.

**Replication of the United States of  
America to the Answers of the Sev- 799  
eral Defendants, Filed Herein May  
6, 1912.**

*Replication.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,  
Petitioner,

vs.

HAMBURG-AMERIKANISCHE PAC-  
KETFAHRT - ACTIEN - GESELL-  
SCHAFT and others,

Defendants.

In Equity  
No. 7-74.

800

This replicant, the United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of defendant, Hamburg-Amerikanische Packetfahrt-Actien-Gesellschaft, of the answer of defendant, The Allan Line Steamship Company, Limited, of the answer of defendant, Emil L. Boas, of the answer of defendant, Canadian Pacific Railway Company, of the answer of defendant, Bryce J. Allan, of the answer of defendants, International Mercantile Marine Company, and others, of the answer of defendants, Nederlandsch-Amerikaansche Stoempvaart Maatschappij and another, of the answer of defendants Anchor Line and another, of the answer of defendants, Gustav H. Schwab and others, of the answer of defendant, Norddeutscher Lloyd, of the answer of defendant, The Cunard Steamship Company, Limited, of the answer of defendant, Charles P. Sum-

801

*Replication*

802

ner, of the answer of defendant, Russian East Asiatic Steamship Company, Limited, of the answer of defendants, Alexander E. Johnson and Max Strauss, for replication thereunto, saith that it doth and will aver, maintain and prove its said petition to be true, certain and sufficient in law to be answered unto by the said defendant, and that the answers of the said defendants are very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answers contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct and humbly prays as in and by its said petition it hath already prayed.

803

HENRY A. WISE,

United States Attorney for the  
Southern District of New  
York,

Solicitor for the Petitioner,  
Office and Post Office Address,  
Room 50, P. O. Building,  
Borough of Manhattan,  
City of New York.

804

**Order to Show Cause.**

805

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,  
Petitioner,

vs.

HAMBURG-AMERIKANISCHE PACK-  
ET - FAHRT - ACTIEN - GESELL-  
SCHAFT and others,  
Defendants.

806

On reading and filing the annexed affidavit, it is  
hereby

Ordered, adjudged and decreed that the defendants,  
the Allan Line Steamship Company, Limited, Inter-  
national Mercantile Marine Company (American  
Line), International Navigation Company, Limited  
(American Line), the Anchor Line (Henderson  
Brothers), Limited, Canadian Pacific Railway Com-  
pany, the Cunard Steamship Company, Limited, Brit-  
ish and North Atlantic Steam Navigation Company,  
Limited (Dominion Line), Hamburg-Amerikanische  
Packetfahrt-Actien-Gesellschaft (Hamburg-American  
Line), Nederlandsh-Amerikansche Stoomvaart Maat-  
schappij (Holland-Amerika Lijn), Norddeutscher  
Lloyd (North German Lloyd Line), Societe Anonyme  
de Navigation Belge Americaine (Red Star Line),  
Russian East Asiatic Steamship Company, Limited,  
(Russian-American Line), Oceanic Steam Navigation  
Company, Limited (White Star Line), Bryce J. Allan,  
Phillip A. S. Franklin, William Coverley, Charles P.  
Sumner, Emil L. Boas, Adrian Gips, Gustav H.  
Schwab, Herman C. Von Post, Gustave H.

807

*Order to Show Cause*

808

Schwab, Jr., Alexander E. Johnson and Max Strauss, and each of them, show cause on the fifth day of June, 1912, at 2:00 o'clock P. M., or as soon thereafter as counsel can be heard, at Room 124 of the Post Office and Court House Building, at the Southern District of New York, and in the City and State of New York, why a Special Examiner should not be appointed forthwith to begin taking testimony in the above entitled cause not later than the 15th day of June, 1912.

Service of a copy of this order and the papers on which it is granted made on the attorneys for the various defendants on or before the fourth day of June, 1912, at five o'clock P. M. shall be sufficient.

E. HENRY LACOMBE,  
U. S. C. J.

State of New York,  
County of New York,  
Southern District of New York, } ss:

Henry A. Guiler, being duly sworn, deposes and says:

810 That he is an Assistant United States Attorney for the Southern District of New York, and on information and belief that the above entitled cause is at issue on the petition, answers and replications heretofore filed; that this cause has been duly expedited by the filing of a certificate for that purpose; that the petitioner, the United States of America, is desirous of having a Special Examiner appointed for the purpose of taking testimony in this cause, the said Examiner to begin taking testimony herein not later than the 15th day of June, 1912, and to proceed thereafter until the conclusion of the testimony in the case; that the deponent herewith files this affidavit for the pur-



*Order to Show Cause*

811

pose of having said Special Examiner appointed, and for the purpose of obtaining an order to show cause directing the defendants to show cause why said Examiner should not be appointed as requested; that no other application has been heretofore made for the appointment of the Special Examiner aforesaid.

HENRY A. GUILER.

Sworn to before me this

29th day of May, 1912.

Frederick L. Campbell,

Notary Public, Kings Co.

Certif. filed in N. Y. Co.

(Seal.)

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814

**Order for Special Examiner.**

At a Stated Term of the United States District Court for the Southern District of New York, held at the United States Court House and Post Office Building, in the Borough of Manhattan, in the City of New York, on the 5th day of June, 1912.

Present: Hon. E. Henry Lacombe,  
H. G. Ward,  
Walter C. Noyes,  
Circuit Judges.

815

UNITED STATES OF AMERICA,  vs.  HAMBURG-AMERIKANISCHE PACK- ET - FAHRT - ACTIEN - GESELL- SCHAFT, <i>et al.</i> ,  Defendants.	}	In Equity.
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It appearing that the above entitled cause is at issue on the petition, answers and replications heretofore filed,

816

Now, upon motion of Henry A. Wise, United States Attorney, solicitor for the petitioner, it is

Ordered that Charles E. Pickett, Esq., of the City of New Haven and State of Connecticut, be and hereby is designated and appointed as Special Examiner to take and report to the Court evidence adduced or offered by the petitioner and defendants respectively, with full authority as such Special Examiner, according to the rules and practice in such case made and provided;

That said Examiner give notice by mail to counsel for the respective parties of his appointment herein,

*Order for Special Examiner*

817

and of the time and place when and where he will attend for the purpose of hearing such testimony as may be adduced (the first hearing not to be earlier than the 10th day of June, 1912), and that notice be given by the respective counsel or solicitor to the opposing counsel or solicitors or parties by mail or personally, of the time and place of the examination, or such reasonable time as the examiner may fix or order in each case;

That said examiner may, when necessary or convenient for the respective parties, continue said hearings from time to time by order made and entered during any regularly appointed or noted hearing had hereunder;

818

That said examiner may in his discretion when necessary or convenient for the respective parties or witnesses, hold such hearings and receive such testimony on behalf of any party at such times and at such places within or without the said Southern District of New York as he may designate and appoint by giving special notice to the respective parties or their solicitors, or by order made and entered at any regularly appointed or noted hearing had hereunder; notice of such time and place of hearing also to be given by the respective counsel for the solicitors to the opposing counsel or solicitors or parties as provided by this order;

819

That Charles P. Hanson is hereby appointed the stenographer of the examiner to take the testimony stenographically, with authority to employ such additional stenographers to assist in the taking of said testimony from time to time as may be necessary;

That all testimony adduced pursuant hereto be taken in the usual manner under oath, and when completed be reported by said examiner, together with all and several the proceedings had before him, to this Court, and filed with the Clerk thereof, in accordance with the rules and practice of this Court, and it is

820

*Order for Special Examiner*

Further ordered that the time within which the petitioner shall complete the taking of its testimony in chief shall be September 5th, 1912. During this period there will be a vacation of six continuous weeks, beginning on July 10th, unless counsel may agree on some other arrangement. The time within which the defendants shall complete the taking of testimony to be adduced on their behalf shall expire on October 12th, 1912, and the time within which the petitioner shall complete the taking of its testimony in rebuttal shall be 15 days, beginning from the date of the completion of the taking of the testimony of the defendants, provided, however, that any party may apply to the Court on good cause shown for further extension of time within which to take the proofs of such party, and it is

821

Further ordered that the taking of all such testimony shall proceed from day to day except on Saturdays, and except for such time as may be necessary for travel and for such other unavoidable causes as to the examiner shall seem sufficient.

Dated, New York, June 5th, 1912.

E. HENRY LACOMBE,  
Circuit Judge.

822

H. G. WARD,  
Circuit Judge.  
WALTER C. NOYES,  
Circuit Judge.

(Endorsed on back of Order): June 6, 1912 A copy received Burlingham Montgomery & Beecher. June 6, 1912 Copy of the within is hereby admitted. Ralph J. M. Bullowa Atty for Russian East Asiatic Co. Ltd. Spooner & Cotton Sol. for Hamburg Am. Line *et al.* Choate & Larocque Solrs for North German Lloyd *et al.* Lord Day & Lord Solrs for Cunard S S Co Ltd & Charles P Summer.

**Notice of Hearing.**

823

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,  
 Petitioner,  
 against

HAMBURG-AMERIKANISCHE PACK-  
 ET - FAHRT - ACTIEN - GESELL-  
 SCHAFT, *et al.*,

Defendants.

824

Sirs:

You will please take notice that the undersigned, by order of the United States District Court made and entered the 5th June, 1912, was appointed Examiner in the above entitled cause to take and report to the Court the evidence therein adduced or offered by the petitioner and defendants respectively, according to the rules and practice in such case made and provided; and that I shall attend for the purpose of hearing such testimony at Room 101, United States Court and Post Office Building, Borough of Manhattan, in the City of New York, on the 17th June, 1912, at 11 o'clock in the forenoon of that day, and that a hearing will then and there be had.

825

Dated, New York, 7th June, 1912.

C. E. PICKETT,

Special Examiner.

*Notice of Hearing*

826

To:

The Honorable Henry A. Wise,  
United States Attorney,  
Post Office Building, New York, N. Y.  
Messrs. Choate and Larocque,  
No. 40 Wall Street,  
New York, N. Y.

Messrs. Burlingham, Montgomery and Beecher,  
No. 27 William Street,  
New York, N. Y.

Messrs. Spooner and Cotton,  
No. 32 Liberty Street,  
New York, N. Y.

827

Messrs. Lord, Day and Lord,  
No. 49 Wall Street,  
New York, N. Y.

Ralph J. M. Bullowa, Esqr.,  
No. 21 State Street,  
New York, N. Y.

828

**Order.**

829

At a Stated Term of the United States District Court in and for the Southern District of New York, holden at the Court House and Post Office Building, Borough of Manhattan, City of New York, this 15th day of October, 1913.

Present: Hon. E. Henry Lacombe, Circuit Judge.  
 Hon. Henry G. Ward, Circuit Judge.  
 Hon. Henry W. Rogers, Circuit Judge.  
 Hon. Alfred C. Coxe, Circuit Judge.

830

THE UNITED STATES OF AMERICA,  
 Petitioner,

vs.

HAMBURG-AMERIKANISCHE PAC-  
 KETFAHRT - ACTIEN - GESELL-  
 SCHAFT, *et al.*

Defendants.

*Order.*

The parties hereto consenting it is

831

Ordered, *nunc pro tunc*, that the time within which the petitioner shall complete taking its testimony shall be, and hereby is extended to and including the twentieth day of November, Nineteen hundred and twelve; and that the time within which the defendants shall complete the taking of testimony to be adduced in their behalf shall be, and hereby is extended to and including the Fourteenth day of April, nineteen hundred and thirteen.

And it is further ordered, that all testimony heretofore taken herein, subsequent to the dates mentioned

*Order*

832

in the order of June fifth, nineteen hundred and twelve,  
for the taking of testimony, is to be considered as  
part of the testimony in this case.

New York, October 15th, 1913.

E. HENRY LACOMBE,

Circuit Judge.

ALFRED C. COXE,

Circuit Judge.

HENRY G. WARD,

Circuit Judge.

HENRY WADE ROGERS,

Circuit Judge.

833

We hereby consent to the entry of the foregoing  
order.

New York, October 15th, 1913.

H. SNOWDEN MARSHALL,

Atty. for Petitioner.

CHOATE & LAROCQUE,

LORD, DAY & LORD,

BURLINGHAM, MONTGOMERY

& BEECHER,

RALPH JAMES BULLOWA,

SPOONER & COTTON,

Attorneys for Defendants.

834



## UNITED STATES DISTRICT COURT,

835

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,  
 Petitioner,  
 against

HAMBURG-AMERIKANISCHE PACK-  
 ETFAHRT - ACTIEN - GESELL-  
 SCHAFT and others,  
 Defendants.

836

Before: Charles Elliott Pickett, Esq., Examiner.

New York, June 18th, 1912.

Appearances:

Henry A. Wise, Esq., Goldthwaite H. Dorr, Esq.,  
 Henry A. Guiler, Esq., John S. Bradley, Esq., for the  
 petitioner.

Burlingham, Montgomery & Beecher, Esqs., by  
 Charles C. Burlingham, Esq., and Norman B. Beecher,  
 Esq., for the Anchor Line, Limited, William Coverley,  
 Nederlandsh-Amerikanische Stoomvaart Maatschap-  
 pij, Adrian Gips, International Mercantile Marine  
 Company, International Navigation Company, Lim-  
 ited, British and North Atlantic Steam Navigation  
 Company, Limited, Societe Anonyms De Navigation  
 Belge Americaine, Oceanic Steam Navigation Com-  
 pany, Limited, Phillip A. S. Franklin.

837

Choate & Larocque, Esqs., by William D. Choate,  
 Esq., and Nelson Shipman, Esq., for Norddeutscher  
 Lloyd, Gustav H. Schwab, Gustav H. Schwab, Jr.,  
 Herman C. Von Post.

838 Spooner & Cotton, Esqs., by L. C. Spooner, Esq., for The Allan Line Steamship Company, Limited, Bryce J. Allan, Hamburg-Amerikanische-Packetfahrt-Actien-Gesellschaft, Emil L. Boas, Canadian Pacific Railway Company.

Lord, Day & Lord, Esqs., by Lucius H. Beers, Esq., and Allan B. A. Bradley, Esq., for The Cunard Steamship Company, Limited, Charles P. Sumner.

Ralph J. M. Bullowa, Esq., personally, and Walter Rogers Deuel, Esq., for Russian East Asiatic Steamship Company, Limited, Alexander E. Johnson, Max Strauss.

839 It is admitted upon the record by all of the defendants that each of the corporations named in the petition herein, are and were corporations as alleged in said petition.

Mr. Spooner: I should like to state that one of the defendants Emil Boas, who has filed an answer in this suit, has died since the cause was at issue.

Mr. Wise: I think that we can agree that that is the fact and will leave it in that way.

840 Mr. Dorr: Is there any response by The International Mercantile Marine Company to a subpoena, under date of June 4th, 1912, calling for certain letters or letterpress or other copies of letters exchanged between this corporation and its officers or agents or employees in Europe and its officers, agents and employees in the United States at divers times during the years 1908, 1909 and 1910, referring and relating to the formation, the terms and the execution and the maintenance of a certain written agreement entitled "AA," and divers other documents.

Mr. Beecher: We are making search of our correspondence and files and in the brief time since we have gotten the subpoena we have not been able to get the matter in such shape as to bring it. We will produce whatever we can get together; that applies to all the clients we represent.

Mr. Dorr: I will offer the subpoena as an exhibit. 841  
 Marked Petitioner's Exhibit No. 1.

Mr. Dorr: As to the other subpoena, Mr. Beecher, addressed to the International Mercantile Marine Company under date of the 10th of June, I call for the production of certain agreements therein set forth.

Mr. Beecher: If you will include in your call the subpoenas upon all of the defendants we represent, which are the White Star Line, American Line, Red Star Line, International Mercantile Marine Company, International Navigation Company, British & North Atlantic Steam Navigation Company, Anchor Line and Dominion Line, I will, pursuant to such subpoenas, produce all of the agreements or what purport to be copies of the agreements apparently described in the subpoenas served upon us, all that we have been able to find. 842

Mr. Dorr: Does that apply to the Holland Amerika and the Anchor Line?

Mr. Beecher: The Holland Amerika has not been subpoenaed to produce any, and on behalf of the Anchor Line, pursuant to the subpoena served upon that company, we produce certain of the papers which apparently correspond in regard to those described in the agreement, being all that the Anchor Line has in its possession or has been able to find.

Mr. Dorr: Have you those now?

Mr. Beecher: For the Anchor Line, International Mercantile Marine Company, International Navigation Company, British-North American Steam Navigation Company, Red Star Line, Oceanic Steam Navigation Company I produce the following papers. 843

Mr. Dorr: I offer in evidence copy of agreement of January 10th, 1892, between the Hamburg-American Line and Holland American Line and others produced by Mr. Beecher from the various lines represented by him.

844 Mr. Bullowa: I note an objection on the part of the defendants, Russian East Asiatic Steamship Company and Johnson and Strauss on the ground, not that it is a copy, but on the ground that it is not binding upon these defendants, no allegation in the bill binding these defendants regarding any agreement made in 1892; the defendant Russian East Asiatic Steamship Company, Limited, was not incorporated at that time.

Marked Petitioner's Exhibit No. 2.

845 Mr. Beecher: Mr. Dorr, in producing these papers which I have, you will understand that we have had no means of verifying the correctness of the documents, and that while we do not intend to object to their admission on the ground that they are not true copies if received, the objection will not be taken on that ground, subject to any correction in the future.

Mr. Dorr: The Government has no objection on that ground as to any of the defendants.

Mr. Wise: Can we have on the record that they are produced from the files of your clients?

Mr. Beecher: They are produced from the files of our clients or the files of our agents and representatives here, but without an opportunity to confirm the correctness of the various documents produced.

846 Mr. Wise: It is stipulated that an objection when taken by counsel for any one of the defendants shall inure to the benefit of all unless repudiated by some one or other of the defendants.

Mr. Spooner: The defendants object to the admission of this agreement of 1892, Exhibit 2, as incompetent and irrelevant and not being within the issues made by the pleadings.

Mr. Beers: In order to save time and to avoid the frequent repetition of objections can it not be understood that the defendants object to the admission of evidence in regard to all agreements other than the Agreement "AA" (which is set forth in the bill), upon the ground that such evidence is irrelevant, immaterial and incompetent and not within the issues in this suit.

Mr. Wise: That is entirely satisfactory; it is understood that such an objection is reserved to all the defendants whenever any evidence of any agreement other than the Agreement "AA" is offered by the government today or at any subsequent time in the hearing of the cause.

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Mr. Dorr: I should like to have it appear on the record that these documents produced are produced in obedience to that subpoena, and I would like to have the subpoena in the record to show what it calls for. That this subpoena is similar to all the others issued. I think we will stand upon the subpoena in regard to the Agreement "AA", Mr. Beecher, if you have it.

Mr. Beecher produces Agreement "AA."

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Mr. Dorr: We offer in evidence as Exhibit No. 3 an Agreement "AA" produced by Mr. Beecher, the agreement mentioned in the petition, dated February 5th, 1908.

Mr. Bullowa: The defendants Russian East Asiatic Steamship Company, Limited and Johnson and Strauss make the same objection on the same ground.

Mr. Wise: Suppose we stipulate on the record that you are saved an objection on that ground to all evidence that is offered relating to anything that transpired prior to the time when your pleading admits your client became a member of the pool.

Mr. Bullowa: That will be satisfactory to me; especially any agreements made prior to our creation.

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Mr. Wise: All right.

Mr. Dorr: I offer in evidence an agreement entitled "Agreement L" under date of January 1st, 1904, relating to a so-called eastbound pool and produced by the International Mercantile Marine Company, White Star Line, American Line, Dominion Line, International Navigation Company, Limited, pursuant to subpoenas of June 10, 1912. The parties to this pool being the N. D. L. V., the Trans-Atlantic and the American Line.

850      Marked Petitioner's Exhibit No. 4.

Mr. Spooner: I ask that these be marked subject to the same objection so far as the agreements are concerned, it is not necessary to repeat them.

Mr. Dorr: I offer "Agreement G" between the Hamburg-American Line, Holland-Amerika Line, Norddeutscher Lloyd, Red Star Line and the Trans-Atlantic under date of 1903 or the early part of 1904; it does not appear in the agreement itself; it is the latter part of 1903 and prior to March, 1904, the exact date does not appear; this paper being produced by defendants, International Mercantile Marine Company, White Star Line, American Line, Dominion Line and International Navigation Company.

851      Marked Petitioner's Exhibit No. 5.

Mr. Dorr: I offer in evidence copy of the agreement of February 8th, 1909, produced in obedience to the subpoena before mentioned by the lines before mentioned, relating to the Mediterranean steerage traffic, the Italia, La Veloce Lloyd Italiano, Lloyd Sabauda, Navigazione Generale Italiana & Siculo Americana, Anchor Line, Fabre Line, Hamburg-Amerika Line, Norddeutscher Lloyd and White Star Line.

Marked Petitioner's Exhibit No. 6.

Mr. Beecher: Special Agreement B mentioned in the subpoena we have not been able to find.

852      Mr. Dorr: I offer what purports to be a copy of "Special Agreement B;" if there is any objection on the ground that it is not properly proved I will withdraw the offer at this time; it is a copy which has come into my possession from other lines.

Mr. Beecher: It is all subject to confirmation?

Mr. Dorr: Yes. If there is any objection to this not being proved at this time we will withdraw the offer at this time.

Mr. Beers: The files of my clients do not contain a copy of the "Special Agreement B." What date do you understand it is.

Mr. Dorr: October 1908 I think it is.

Marked Petitioner's Exhibit No. 7.

853

Mr. Dorr: There is no special objection to that on the ground of lack of proof?

Mr. Beers: On behalf of the Cunard Line I make special objection to "Special Agreement B," Petitioner's Exhibit No. 7, on the ground that it is an agreement entirely foreign to the agreement set forth in the petition, and appears to be between parties who are not parties to this action, and relates to such matter not included in this proceeding, and is immaterial and irrelevant and incompetent, but there is no objection on the ground of its being merely a copy.

Mr. Dorr: Not that it is not sufficiently proven?

Mr. Beers: No, we make no objection as to the method of proof.

854

Mr. Dorr: I now offer "Special Agreement A" produced by Mr. Beecher in response to the subpoenas above mentioned; this agreement purporting to be under date of September 12th, 1908.

Mr. Beers: That is the one beginning October 1st, 1898?

Mr. Dorr: Yes, I think that is obviously an error in the subpoena, because it appears to be signed on December 12, 1908, and February 6th, 1909, and to have been printed on February 18th, 1909. This contract has been made from the 1st of June, 1909, to the 30th of June, 1911.

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Marked Petitioner's Exhibit No. 8.

Mr. Dorr: I offer in evidence "Agreement N," Agreement between the N. D. L. V. and the Austro-Amerikano, under date of November 13th, 1904, copy of which has been produced by Mr. Beecher pursuant to the subpoenas before mentioned. I have here what purports to be the original German copy of that agreement and I would suggest that they go in together. This appears to be a translation.

- 856 Mr. Burlingham: Put them together in two parts.  
English copy marked Petitioner's Exhibit 9A.  
German copy marked Petitioner's Exhibit 9B.

Mr. Dorr: I offer in evidence "Agreement W," being an agreement for second-class business between the Allan Line, American Line, Anchor Line, Canadian Pacific Railway Company, Compagnie Generale Trans-Atlantique, Cunard Line, Dominion Line and Donaldson Line, Hamburg American Line, Holland Amerika Line, Norddeutscher Lloyd, Red Star Line and White Star Line dated February 5th, 1908, with "Appendix 1" under date of April 28th, 1908, and "Appendix 2" under date of August 7th, 1908.

Marked Petitioner's Exhibit No. 10.

- 857 Mr. Beers: I make the same objection.

Mr. Dorr: I offer in evidence "Agreement V," agreement for first-class business between the Allan Line, American Line, Anchor Line, Atlantic Transport Line, Canadian Pacific Railway Company, Compagnie Generale Trans-Atlantique, Cunard Line, Dominion Line, Hamburg American Line, Holland Amerika Line, Leyland Line, Norddeutscher Lloyd, Red Star Line, White Star Line, under date of February 5th, 1908, with "Appendix 1" under date of April 28th, 1908, "Appendix 2" under date which does not appear, "Appendix 3," with an amendment to the "Appendix 1" under date of August 7th, 1908, all of which are produced by Mr. Beecher under the above mentioned subpoenas.

- 858

Mr. Spooner: That is objected to on the ground that it is not within the issues made by the pleadings; it relates entirely to first-class business and is therefore incompetent and irrelevant.

Marked Petitioner's Exhibit No. 11.

Mr. Dorr: Have you produced the minutes of meetings held at Paris on the 29th of January, 1909, by the members of the N. D. L. V.?



Mr. Beecher: No, we have not.

859

Mr. Dorr: Have you produced the minutes of meetings by the representative of the various Conference Lines held on March 25th, 1908?

Mr. Beecher: No, we haven't any.

Mr. Spooner: I would like to say as far as I have been able to ascertain the clients that I represent here were not served with any subpoena *duces tecum*.

Mr. Dorr: That was an oversight on our part if they were not.

Mr. Spooner: I don't make any suggestions of showing error on your part, but exculpating ourselves.

Mr. Dorr: Here is a subpoena endorsed by the Marshal showing that it has been served on the Allan Line by service on L. J. Garcey, as agent of the Allan Line (presenting it to Mr. Spooner, a copy of subpoena).

860

Mr. Spooner: That is on somebody who does not represent us at all; it is an entirely different corporation.

Mr. Dorr: You represent the Allan Line, Mr. Spooner (showing subpoena)?

Mr. Spooner: Yes. I never heard of him before.

Mr. Dorr: He is the agent, is he not?

Mr. Spooner: I never heard his name as an agent. That can be easily adjusted; all I say is we have not known of it.

Mr. Dorr: I offer in evidence agreement of January 29th, 1909, and a translation, minutes of meeting of the Conference at Paris, on January 29th, 1909, produced by Mr. Beecher under above mentioned subpoenas.

861

English translation marked Petitioner's Exhibit No. 12A.

German copy marked Petitioner's Exhibit No. 12B.

Mr. Waters appears on behalf of Funch Edye & Company and states that they have none of the papers and are not a party to the action referred to in the subpoena.

862 Mr. Beecher: The Anchor Line produces "Agreement B" and "Mediterranean Steerage Traffic Agreement" of February 8th, 1909, and "Special Agreement A", pursuant to the subpoena, those being the only papers or copies or purported to be copies that they are able to find.

Mr. Dorr: The Cunard Steamship Company has been subpoenaed to produce certain letters and letterpress copies of correspondence with regard to "Agreement AA" and other matters.

863 Mr. Beers: I am informed by my client, that is by the New York agent of our company in the city here, that so far as he could find he has not in his office any of the papers called for in this subpoena under date of June 12th, 1912, in the same form of Petitioner's Exhibit No. 1 addressed to the Cunard Company. I understand that the correspondence relating to the rates to be charged in the company's business is intended to be called for by the subpoena, Petitioner's Exhibit 1. I ask that a more definite subpoena be issued by the Government specifying the nature of the document, and I will accept service on behalf of my client.

864 Mr. Dorr: Does that refer to that part of this subpoena where it says "Agreements entered into by said corporations at London, England, on or about March 25th, 1908, relating to the operation of said lines of ships in competition with the ships of lines not party to said Agreement 'AA' and to operation of 'fighting,' 'opposition,' 'competitive,' or 'defending' steamers by said corporations, parties to said Agreement 'AA' from time to time in the years 1908, 1909, 1910, and the fixing and payment of compensation therefor, and to the rules made by said lines as to the employment of their agents as agents of other lines and the enforcement of such rules"?

Mr. Beers: I understand that it does.

Mr. Dorr: Do you complain the subpoena is not sufficiently definite in that regard?

Mr. Beers: I am informed by the New York agent of my client that he has not in his office any papers relating to the operations of the Cunard Line and to the operation by said lines of ships in competition with the ships of lines not party to said Agreement from time to time in the years 1908, 1909, and 1910, and the fixing and payment of compensation therefor. 865

Mr. Dorr: I think Mr. Beers that probably the best way of making the thing definite and certain would be to examine the agent as to the information that he has as to that and any alterations that may be necessary in the subpoena can be made.

Mr. Dorr: Mr. Beecher, in regard to the Anchor Line, you are having a search made for such letters as may be covered by the subpoena? 866

Mr. Beecher: The same as to all of our lines; we will make search and produce them.

Mr. Dorr: The Norddeutscher Lloyd, the Government produces subpoena and proof of service on the North German Lloyd Line calling for letters and copies of letters relating to Agreement "AA" and relating to the operation of fighting ships during the years 1908, 1909 and 1910, dated the 12th day of June, 1912, being in the same form as Exhibit No. 1.

Mr. Shipman: The agents are making search through their files for the letters called for and have not been able to complete it as yet.

Mr. Dorr: I will call the subpoenas again after reasonable opportunity has been given. 867

Mr. Spooner: As far as the defendants I represent are concerned all of these letters are mingled with general correspondence from all sections, and it is a sifting process to produce them.

Mr. Dorr: Is Mr. Strauss here?

Mr. Bullowa: I appear for him.

Mr. Dorr: Mr. Strauss was served with subpoena to produce certain agreements under date of June 10th, 1912, to produce an agreement or copy thereof between the Russian American Line and the Atlantic Confer-

868 ence, admitting the said Russian Line as a member of said Conference, dated on or about September 1st, 1908; also all other correspondence and documents for the year 1908 in any way relating to the admission of said Russian American Line to said Conference; and, also, all correspondence relating to the withdrawal of A. E. Johnson & Company of New York from lists of persons eligible as agents of Conference Lines in New York, said correspondence being dated on or about the 3rd day of September, 1908.

Mr. Bullowa: We have been making search for such correspondence but so far I do not believe we can gather any correspondence relating to these things.

869 Mr. Dorr: We will examine Mr. Strauss then this afternoon or tomorrow regarding the correspondence

Mr. Dorr: Mr. Richard of C. B. Richard & Co., agent of the Lloyd Italiano S. S. Co. and formerly agent for the Russian Volunteer Fleet.

Mr. Richard: Here.

Mr. Dorr: You have been asked to produce certain papers in obedience to subpoena *duces tecum*.

(Witness produces papers from his files and hands same to Mr. Dorr.)

Mr. Dorr: I ask that these be marked merely for identification, and I will call Mr. Richard later on as a witness. Those are the only papers which you could find (addressing Mr. Richard)?

870 Mr. Richard: Those are all I could find.

Papers produced by witness marked Petitioner's Exhibits Nos. 13 and 14 for identification.

*Lawson Sandford*

871

LAWSON SANDFORD, sworn on behalf of the Petitioner, testified as follows:

*Direct-examination by Mr. Dorr:*

Q. Mr. Sandford, as secretary of the various steamship conferences in New York City, have you been served with a subpoena *duces tecum*? A. Yes, sir.

Q. Have you produced any papers in obedience to that subpoena? A. I am unable to produce as I have not custody or control of any of the Conference papers.

Q. Did you at one time have the custody of any of the papers mentioned in this subpoena? A. Some, not by any means all.

872

Q. To whom did you turn over the custody of those papers? A. No one in particular. I resigned from the Conference a short time ago and I left the office and turned over the papers and files to no one in particular.

Q. Who is your successor, do you know that? A. I don't think my successor has been appointed.

Q. Did you leave the office that you had been occupying? A. Yes, sir.

Q. And you left the papers there? A. Yes, sir.

Q. In whose custody? A. I don't know; I left the office.

Q. To whom did you turn over the key of the office? A. I don't believe I ever had a key of the office myself.

873

Q. Did you leave it unlocked with these papers in it belonging to the Conference when you left? A. I should say, in answer to your question, I think I understand what you mean, that the Managing Committee of the Conferences had charge of the office here.

Q. This is the Managing Committee; who are the members of the Managing Committee? A. Mr. Walker, Mr. Toppin, Mr. Sickel and Mr. Hartfield.

*Lawson Sandford*

874

Q. Mr. Sandford, how long have you been in the steamship business, connected with it? A. About 17 or 18 years.

Q. What was your first connection with it, in what capacity? A. In Conference work. I was appointed secretary of the Continental Conference about 1893 or 1894, and subsequently as the different conferences were formed or otherwise I was appointed secretary of them as well.

Q. Who were the members of this Continental Conference in which you were appointed secretary? A. At that time?

875

Q. At that time? A. It is rather long to remember; I should think the membership then was the North German Lloyd, Hamburg, Red Star, Holland and French Line.

Mr. Spooner: What is the name of the French Line in French? A. Compagnie Generale Trans-Atlantique.

Q. What were your duties as secretary of that Conference?

Mr. Spooner: Weren't your duties defined in writing?

The Witness: No, simply appointed secretary as I recollect it in a letter containing possibly three lines.

876

Q. Did that Conference keep minutes? A. Yes.

Q. Where are those minutes, do you know? A. They are presumably at the Conference office.

Q. That is the Continental Conference? A. Yes, sir.

Q. That Conference is still in existence? A. Yes, sir.

Q. And you remained secretary of it until when? A. Until April of this year.

Q. And those minutes were among the papers that you turned over to the managing committee? A. Yes, sir.

Q. What other Conferences were you secretary of if any? A. Two other passenger conferences—

Mr. Spooner: Objected to as incompetent and immaterial and not within the issues.

Mr. Dorr: I stand on the question.

A. Two other conferences concerning passenger business; the Mediterranean Conference and the North Atlantic Passenger Conference and a Freight Conference.

Q. What was the name of the Freight Conference?

Mr. Spooner: Same objection.

A. Trans-Atlantic Associated Freight Conferences.

Q. Did all of these conferences have their office in the same room? A. Yes, sir.

Q. Who were the members of the North Atlantic Conference at the time of its formation and what was the date of its formation?

Mr. Spooner: That is a matter of record.

A. That is all a matter of record.

Mr. Spooner: That is set forth in the minutes.

The Witness: Yes; shall I try to recollect it?

Q. Yes, if you will? A. About 1896 the North Atlantic Passenger Conference was formed; the lines belonging to it were those in the trades between the United States and Canadian ports, the United Kingdom and Scandanavia.

Q. Did it include the lines which were in the Continental Conference? A. No, it did not.

Q. Any of them; an entirely distinct set of lines? A. Yes, sir.

Q. Has that Conference continued until the present time? A. Yes.

*Lawson Sandford*

880

Q. How about the Mediterranean Conference; who were the members of that Conference and when did that begin? A. The Mediterranean Conference, as is true with the other passenger conferences, was formed prior to my coming into the business, but I think the Mediterranean Conference was originally formed about 1887 with four or five members.

Q. When did you become secretary of it? A. Probably about 1895.

Q. And who were the members at that time? A. Anchor line—

881

Mr. Spooner: We want to make a general objection to the testimony of this witness relating to matters which occurred prior to the date of the agreement upon which this suit is based, and as incompetent and immaterial and not within the issues of the case.

A. (Witness continuing): Anchor Line, French Line, Holland Amerika Line, Red Star Line, North German Lloyd, Hamburg American Line and Navigazione Generale Italiano.

Q. Did that Conference continue continuously until the present day? A. With interruptions it has been more or less in existence ever since.

882

Q. Was there an interruption in 1907 or 1908? A. Possibly; I don't remember.

Mr. Spooner: Did it continue during the interruption?

The Witness: The office was continued, sir.

Q. Did your salary continue? A. Yes, assuredly.

Q. But there was no agreement during that time?

A. The office was a great deal more than purely a routine organization for keeping minutes of meetings; we had to keep in touch with all of the various departments of the government, all of which I outlined to you on previous occasion.



*Larson Sandford*

883

Q. I show you Government Exhibit 2 and ask you whether you have seen that agreement, or a copy of it, or what purported to be a copy of it before? A. I have never had a copy of this in my possession.

Q. Have you ever seen it? A. I probably have seen it; I am quite sure I never read it through.

Q. Was the North Atlantic Conference of which you have spoken connected in any way to your knowledge with this agreement? A. Our work in America?

Q. Yes? A. Entirely distinct and separate.

Q. It had no relation whatever to the agreement? A. As far as the secretary was concerned it had no relation to the agreement whatever.

884

Q. You had no relations at all? A. Personally not.

Q. Do you know whether there was a conference of which the same parties were members in Europe?

Mr. Spooner: Objected to as immaterial, irrelevant and incompetent.

A. I don't think I am competent on that.

Q. Do you know of any such Conference? A. I know by hearsay there was a Conference in Europe, of course.

Mr. Spooner: Objected to.

Q. From whom did you hear it? A. I heard it—

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Mr. Spooner: Objected to as incompetent.

Q. From whom did you derive any such information as you had in regard to this matter? A. One very good source of information was the newspaper.

Q. Was that a source from which you derived it? A. Not necessarily the only source.

Q. Did you derive it from officers and agents and employees of the various lines which were members of the Conference in New York?

Mr. Beers: Objected to as hearsay.

A. I did.

Q. With what officers and employes—

Mr. Beers: There is a general objection entered to all these questions as hearsay?

887 Mr. Dorr: Yes, I understand so. I have not yet asked what the nature of these hearsay communications were. With whom did you have these communications as to the existence or non-existence of a conference in Europe of which the same lines were members that were members of the Conference in New York of which you were secretary? A. I was secretary of the New York Conference and as such dealt only with the New York representatives—I want to change that; I was secretary of the Conference in America described and it was entirely distinct and separate from any work done in Europe. I naturally received instructions from committees or individuals in respect to the work in America, but had nothing to do whatever with the work in Europe.

888 Q. Yes, but I am asking you now, Mr. Sandford, whether or not you had conversations with the agents and representatives of these various lines who were members of Conference in America as to the existence of a conference on the other side? A. Undoubtedly I did, but I cannot recall now any particular conversation.

Q. You do not recall the particular conversation?  
A. No.

Q. What were the substance of those conversations as to the existence of a conference on the other side of which the same lines were members that were members of the conference in New York of which you were secretary?

Mr. Spooner: Objected to as incompetent.

Mr. Beecher: Calling for hearsay and conversations with unnamed and unknown persons.

Q. These conferences were with the representatives of these various lines in New York?

Mr. Spooner: Objected to as leading and improper therefore.

A. I met the representatives of the lines in America very frequently. To endeavor to recall any particular instance at this late date is rather difficult for me to do.

890

Q. You had conversations, did you not, with them about the existence of a conference on the other side?

A. I have said that I knew by hearsay that there was a conference in Europe, but I had nothing to do with it.

Q. Then I understand that—

Mr. Spooner: Do you know it at all except by hearsay?

The Witness: If I understand what hearsay means I am only speaking now about hearsay.

Mr. Spooner: You don't know it of your own knowledge?

The Witness: No, sir; I do not.

Mr. Dorr: Of course, the Government believes that it is competent for this witness to testify to communications made to him by the defendants and their agents.

891

Mr. Spooner: But it is not usually competent for the Government to cross-examine its own witnesses.

Mr. Dorr: This particular witness having been in the employ of the defendants for some seventeen years he can hardly be regarded as a friendly witness for the Government.

Mr. Spooner: He has not been unfriendly. He has been frank as far as he knows.

By Mr. Dorr:

Q. What was the substance of the communications that you received or information that you received, from the representatives of these various lines as to the existence in Europe of a conference of which the same lines were members that were members of the Conference in New York of which you were secretary.

893

Mr. Spooner: Let the witness state from whom he received any information on that subject.

Mr. Beecher: Objected to wholly as hearsay and as calling for a conversation with unnamed and unknown persons whose relations to the defendants are not shown and whose knowledge of the subjects of which they are alleged to have spoken is not shown.

Mr. Spooner: I object to this on the ground that unless he can state from whom he received the information—

The Witness: Will you give me a specific instance? How many years ago are you referring to now?

894

Q. Well, we will go back to the N. D. L. V. Conference and its members at the time you became secretary and thereafter? A. I am afraid it is too general for me to try to give anything like a specific answer.

Q. Well, give a general answer then? A. I think I have already tried to do so.

Q. Repeat it; perhaps I have not understood it? A. I wouldn't try to repeat something that is already on the record.

Q. Without further fencing, Mr. Sandford, suppose you answer the question as to what was the subject

of the conversations with the representatives—will you repeat, you have already given it, what the subjects of the conversations you had with the agents or representatives of the various lines which were members of the N. D. L. V. Conference in New York were as to the existence of a conference in Europe of which the same or other lines were members.

Mr. Spooner: And when and with what representative, if he had any such conversation.

A. I am at a loss, Mr. Dorr; I don't want to be considered as fencing, but I certainly am at a loss how to answer you.

Q. Beginning with the year you became secretary of the N. D. L. V., when, if at all, did you learn by information from representatives of these foreign lines that there was a conference in Europe of which the same lines were members? A. I never was secretary of the N. D. L. V.

Q. Of the North Atlantic Conference?

Mr. Beecher: It is understood that our objection applies to all this line of testimony?

Mr. Dorr: Yes.

A. I probably heard from time to time of arrangements that were current in Europe, but it gave me no duties to perform.

Q. I understand that, you testified to that three times; just answer my question if you will the best you can; when did you first learn that there was an organization in Europe of which the same parties, or other parties, were members which was engaged—

Mr. Spooner: I object to that on the ground that it assumes that he did learn the fact.

Q. When did you first learn? A. What particular arrangement do you refer to?

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*Lawson Sandford*

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Q. I am referring now to the N. D. L. V.? A. I take it the N. D. L. V. is an abbreviation for a continental agreement made abroad many years ago, and it is utterly impossible for me to answer your question when I heard about it.

Q. Did you ever hear about it? A. Certainly.

Q. And what was it that you heard; can you fix the date generally? A. No, sir.

Q. Was it after you became secretary of the North Atlantic Conference? A. Unquestionably.

Q. How long afterwards? A. I don't know.

899 Q. Was it within a few years A. Probably, quite promptly after it was made effective.

Q. What did you hear from the representatives of the lines which you were representing as secretary in the conferences here were the duties of this conference abroad.

Mr. Beecher: We repeat our objection.

Mr. Spooner: The same objection.

A. If I am correct you are referring to something that was established abroad many years ago.

900 Q. Just answer the question if you will; what did you understand were the duties of this conference or what were you informed that they did in regard to the business of the lines which were represented in that conference? A. If you are referring to the N. D. L. V. arrangements made in Europe many years ago I think I can answer it; is that what you want to know?

Q. I am referring to the period when you were secretary and you know what they did during the period that you were secretary which you learned from the various representatives of the various lines? A. Tell me what you mean?

Q. No? A. It is very difficult for me to give a definite answer when I have no clue to the specific point.

Q. Well, in regard to the steerage business, or in regard to the apportionment of steerage business between the various lines represented? A. By hearsay I certainly know that the N. D. L. V., which was formed many years ago in Europe, had to do with the apportionment of third-class traffic among the continental lines.

Q. What did you do as secretary of the conference on this side, what did you have to do with that apportionment, if anything? A. Nothing whatever. 902

Q. Did you make any reports of the number of steerage passengers that were carried by the various lines? A. I did.

Q. Did you keep statistics? A. Yes, I did.

Q. From what sources did you gather that information? A. It would sound rather strange at this day to make this reply, but it is a fact, when I came in the business there were none of these things whatever between the steamship companies—

Q. Just answer my question; from what source did you derive that information? A. From the steamship lines themselves.

Q. Did you receive weekly reports from those lines? A. I received a report of the passenger carryings of each steamer West and Eastbound after her Eastbound departure. 903

Q. Did you tabulate that information? A. Weekly reports, quarterly reports, annual reports were developed by slow degrees.

Q. What did you do with these reports that you so tabulated? A. Distributed them among the steamship lines, also to the Government and largely by request to the newspapers and used as an index of the trans-Atlantic passenger movement.

Q. Did you send copies to anyone abroad? A. I think the mailing list probably shows the names of 70 to 80 people.

Q. Was Dr. Peters on that mailing list? A. He probably was.

Q. Do you know what Dr. Peters' business was? A. He was secretary of the N. D. L. V. as far as I know.

Q. And secretary of the conference on the other side? A. Of the N. D. L. V.

905 Q. And you sent him as part of your duties, did you not, a report of the steerage passenger movement? A. No, it was not part of my duties; I sent the passenger figures to a great many people; I have not been

allowed to explain how I developed the passenger—

Q. It was not part of your duty to send it to Dr. Peters? A. It was not.

Q. Did you send it regularly? A. Quite so.

Q. How frequently? A. The mailing list worked automatically whenever a report of these figures issued—

Q. And whenever any report was sent to anyone he got it? A. Unquestionably, but may I explain to you how the passenger figures were established?

906 Q. I don't think we are interested in that; if the defendants are they may bring it out.

Mr. Spooner: What is that?

The Witness: I wanted to explain how the passenger figures were developed.

Mr. Spooner: Well, never mind.



*John Peter Zurmand*

907

JOHN PETER ZURMAND, sworn on behalf of Petitioner, testified as follows:

*Direct-examination by Mr. Dorr:*

Q. Mr. Zurmand, you have been connected with the Holland-American Line for how long? A. About 20 years.

Q. Are you familiar with the correspondence which passes back and forth from the home office to the New York office? A. Only part of it.

Q. Are you familiar with the letter books of the line? A. Only part of the letter books.

Q. Are you sufficiently familiar to state whether or not these are the letter books of the New York office of the Holland-American Line? A. I presume they are, although I never wrote in them.

908

Mr. Dorr: I ask that these be marked for identification, each one having a separate number.

Marked Petitioner's Exhibits Nos. 15, 16, 17 and 18 for identification.

Q. I show you what purport to be originals of certain letters from the home office of the Holland-American Line to the New York office and ask you whether you can identify those as letters which were—  
A. They look very much like originals.

909

Q. Examine these if you will? A. The same thing.

Q. These appear to you to be original letters received by the Holland-American Line in New York from the home office? A. Yes, sir.

Mr. Dorr: Will you consider those marked for identification?

Mr Burlingham: Yes.

Recess taken until 2 o'clock P. M.

Afternoon session.

LAWSON SANDFORD, recalled.

*Direct-examination by Mr. Dorr:*

Q. In calling your attention again to Exhibit 2, the Agreement of 1892, page 6, Article 3, which begins on page 5 and continues on page 6, and the commentary, will you state what the British Lines are that are mentioned there; what British Lines were concerned in that contract?

Mr. Beers: It is understood that our objection applies to all this testimony.

Mr. Dorr: Yes.

A. I don't know.

Q. Have you any information about the matter at all? A. No; I see it is dated in 1892.

Q. You were secretary of a conference which was composed of the lines that I mentioned in that Agreement? A. I had nothing to do with this Agreement at all.

Q. Yes, but were you secretary of a conference which was composed of the lines that are mentioned in that Agreement? A. I was secretary of a conference in America of Continental Lines of whom I see a number mentioned here.

Q. That is, they appear to be the same lines that were in the Continental Conference? A. Probably.

Q. Do you know or do you have any information as to whether or not a certain portion of the steerage business was being allotted to the British Lines, did you ever hear any conversation about that or have any conversation with any representative of the lines about it, Mr. Sandford? A. Perhaps so, but I do not remember.

Q. To be specific, do you remember whether you received information from any representatives of the White Star Line? A. I don't remember.

Q. The Cunard? A. I don't know.

Mr. Dorr: I will offer in evidence letter of June 21st, 1904 to the Holland-Amerika Line, New York, from the Holland-Amerika Line.

Mr. Beers: We object to this as immaterial and irrelevant, relating to a period and to transactions not within the issues or referred to in the pleadings.

Marked Petitioner's Exhibit 19.

Mr. Dorr: This is a letter produced from the letters that were identified this morning.

Q. Do you read Dutch, Mr. Sandford? A. No, sir.

914

Q. Do you recall whether or not in 1904 rules had been adopted by the North Atlantic Conference and the Continental Conference in regard to forbidding agents who were acting for the conference lines from doing business for any other line? A. I was not in the conference employment in 1904, 1905 and 1906.

Q. Just answer my question if you will. (Question read).

Mr. Burlingham: Do you mean adopted in that year?

Mr. Dorr: No.

Q. That had theretofore been adopted? A. Prior to that time, yes; many years prior.

915

Q. And they had been continued in force during the time you were secretary? A. Yes.

Q. And temporarily in 1904 and 1905 you were—  
A. I was away from the company.

Q. What was your employment at that time? A. I was in the Cunard Company's service.

Q. Do you recall whether or not at that time Cunard Company was a member of the Conference?

Mr. Beers: Objection renewed.

*Lawson Sandford*

916

A. Yes, the Cunard Company was a member of the Conference all through the period I was with the Cunard Company.

Q. I ask you to read this letter, or I will read a portion of it, and see if it refreshes your recollection: "With regard to the cable correspondence which took place between you and us last week, with the result that Hapag (Hamburg-American Line) has reduced its eastbound steerage rate until further notice to \$20, and that we have reduced the same rate for the sailing of S. S. Rotterdam June 21st to also \$20 we are quite anxious to know what the effect of these reductions will be. With regard to the part of your cable of the 18th instance saying: 'Enforcement Conference Rules forbidding agents booking Cunard Line all services, we beg to observe that considering such action at this moment not free from danger to our own interests we have abstained from following your suggestion. We strongly fear that by enforcing Conference Rules we would drive Cunard to freely use Anti-Trust Legislation against us in whatever way this would be possible and with Mr. Sandford as a Cunard employee we may be certain that if any evidence against us could be presented, it certainly would be expert evidence.'"

917

Does that refresh your recollection as to whether or not the Cunard was a member of the Conference? A. The Cunard was a member of the conference in New York, The North Atlantic Passenger Conference, during the years I was in the Cunard service.

918

Q. What is your information as to whether or not they were sharing with the other lines the pro rata of the steerage business during that time? A. No, they were not a party to the pool.

Q. They were not a party to the pool during that time and their participation then in the Conference was merely in matters of general interest other than

matters connected with that pool? A. The Conference in America never handled pool matters at all.

Q. Never had anything to do with pool matters; never took any steps to carry out pool arrangements?

A. As far as our conference work was concerned not.

Q. You are quite positive of that Mr. Sandford?

A. I am quite positive of it.

Q. This Conference had certain rules as to forbidding agents who were acting for conference lines from acting for any other line, non-conference lines? A. Yes.

Q. And it had penalties too, didn't it; there were rules providing for penalties? A. Yes. 920

Q. Were those rules enforced by the Conference?

A. What conference do you mean?

Q. Well, by all the conferences which you had to do with? A. Yes.

Q. Were the rules substantially the same as to all the conferences which you have mentioned this morning? A. Yes.

Q. And the same policy was followed by the various conferences? A. Yes.

Q. In imposing penalties and enforcing those penalties as against the agents who disobeyed those conference rules? A. Yes.

Q. Well, now, what was the application of the Conference Rule then to the Cunard business at that time? 921

A. I don't know; I have only heard a very brief extract from the letter.

Q. Take it and look at it? A. The Holland-America Line is and then was a member of the Continental Conference and the Cunard Company a member of the North Atlantic Passenger Conference, separate associations of the steamship lines, but having one common headquarter.

Q. Well, under the rules of the Continental Conference then if the agent who represented any of the

members of the Continental Conference sold tickets for the Cunard, which was not a member of that Continental Conference, they would be subject to the penalties provided by the rules of the Continental Conference? A. If you will read the rule in the circular.

Q. That is what I am asking you? A. May I read the rule?

Q. Isn't that your understanding of the rule? A. No, that is not my understanding.

Q. What is the rule as you understand it? A. My understanding is that any reputable line owning its own ships has never had any difficulty with joining one  
923 conference or another in America.

Q. I am asking you about your understanding of the rules; never mind about your understanding of what difficulties the independent lines have or have not been having, that is not my question; I am asking you whether there was a rule in the Continental Conference which forbade the agents who were acting for the lines in that conference from acting as agents for the lines which were not in that conference? A. There is a rule—

Q. Was there such a rule prior to 1904? A. I would like to read the rule.

Q. Have you got it? Is that it? (Handing witness paper.) A. Yes.  
924

(Witness is shown paper under date of May 1st, 1906 produced by the Government.)

The Witness: The Conference Rules—

Q. Are you speaking of the Continental Conference? A. It is a rule common to all of the Passenger Conferences.

Q. That is there is a rule in each Passenger Conference and the substance of that rule is the same? A. Yes.

Q. How does that rule read? A. Agents are prohibited from booking passengers for any steamer except those for the lines members of the Continental, the Mediterranean and the North Atlantic Passenger Conferences unless the Conference gives express permission in writing. Agents are prohibited from selling passenger tickets under false representations as to line or the route by which the passenger is to be transported.

Q. Was that the form of that rule in 1904? A. Yes, I think so.

Q. You are positive about that? A. I think so.

Q. And you are positive that the Cunard was a member of the North Atlantic Conference? A. Yes.

926

Q. Then how could this rule be enforced against the Cunard? A. I don't know that it was.

Q. How could it be if the pool was as you say? A. I don't know; you had better ask the Holland Line, who wrote the letter, I don't know.

Q. Do you know whether as a matter of fact that rule was enforced against the Cunard? A. I don't think it was.

Q. It was never attempted to enforce it? A. I don't know.

Q. That is your information? A. I had no information.

927

Q. Is that also a notice to agents? A. Yes.

Q. Of the Continental Conference? A. Yes.

Mr. Dorr: I offer a circular containing rules of the North Atlantic Conference in evidence, dated 1906.

Mr. Beers. We make objection to the proposed Exhibit 20 on the ground that it is immaterial and irrelevant and not within the issues.

Marked Petitioner's Exhibit 20.

The Witness: The rule was adopted back in eighteen—

Mr. Dorr: I now offer one of the Continental Conference of June 1st, 1903.

Q. What is this typewriting on the side of this Exhibit 20; did you place that on there? A. Yes, sir.

Q. Was it on the circular as issued? A. No.

Mr. Dorr: I will offer this exhibit, then, without the typewriting on the side.

929 Q. Were circulars of this kind issued and distributed by the North Atlantic Passenger Conference? A. Distributed by the members of the North Atlantic Passenger Conference to their agents.

Q. That is the agents who were acting for the Conference lines? A. Acting for them.

Q. They were conference lines, were they not? A. I don't think I grasp that. Each line issued its circulars—

Q. Did you distribute the circulars to any agents who were not acting for the conference lines? A. I never distributed the circulars, the steamship companies individually distributed the circulars to their agents.

930 Q. Did they distribute circulars to agents who were not agents of conference lines? A. I don't suppose so.

Mr. Dorr: I offer in evidence circular No. 12, Third Series, Continental Conference, under date New York, June 1st, 1903.

Mr. Beers: I make the same objection.  
Marked Petitioner's Exhibit 21.

Q. Circulars in the form of Exhibit 21 were circulated in the same way as the others, Exhibit 20? A. Yes.



Q. I show you circular No. 15, Third Series, under date of August 15th, 1905, of the Continental Conference? A. Simply another edition of the earlier circular; simply another edition of the same general circular.

Q. And circulated in the same way? A. Yes.

Mr. Dorr: I offer in evidence Continental Conference circular of August 15th, 1905.

Mr. Beers: I make the same objection.

Marked Petitioner's Exhibit 22.

Q. After 1906, I think that is the last Exhibit which has been offered in evidence, did you from time to time, or did the conferences which you represented, from time to time issue notices to agents in form and substance substantially the same as Exhibits 20, 21 and 22? A. If an edition of a circular was exhausted and lines required more copies a new one was made bearing the date when it was issued; probably later editions were made; I don't remember. 932

Q. There have been circulars since 1906, have there not? A. Yes, but they would have the same form.

Q. Down to what time—are they still issued, do you know? A. Yes.

Q. The same form? A. Yes.

Q. Have you got any other later copies? A. No. 933

Q. I show you what purports to be a circular or agreement of the North Atlantic Passenger Conference of 1896 and ask you whether you have seen that before? A. Yes.

Q. Did you get that up or assist in getting it up, preparing it? A. It was gotten up by the lines who subscribed to it.

Q. Did you have anything to do with its preparation? A. Simply as secretary.

Q. And as secretary was it prepared under your direction? A. I prepared it probably from notes that the lines wished taken.

934

*Lawson Sandford*

Q. Was that issued? A. That was simply a set of minutes of the meeting containing a proposed set of rules.

Q. Were those rules put in force by the lines concerned? A. Yes, or amended rules later.

Mr. Door: I will offer this in evidence.

935

Mr. Spooner: We object to so much of this paper marked 23 for identification, but not yet introduced, as refers to business other than steerage business, upon the ground that it is not within the issues made by the pleadings, and is therefore not only irrelevant but incompetent, and we object to the paper as a whole because it is not within the issues and therefore irrelevant.

Marked Petitioner's Exhibit 23.

Q. What is the American Atlantic Conference, Mr. Sandford? A. The American Atlantic Conference is simply a convenient name—

Mr. Spooner: We object to the question as irrelevant and not within the issues and incompetent.

936

A. (Witness continues.) The American Atlantic Conference is simply a name used conveniently to settle matters arising in America of common interest to the Continental group, and the North Atlantic Passenger Conference group, largely an association on railroad forwarding matters and to conduct through committees the work with the various departments of the Government.

Q. Did it hold separate meetings from the Continental Conference and the North Atlantic Conference? A. No, as a matter of fact, the roads found it convenient to get together.

Q. When did the Association of the Atlantic Conference begin? A. The American Atlantic Conference was started as joint proceedings.

Q. When was that? A. In June, 1908.

Q. Did that result from the adoption of the agreement which has been known as Agreement "AA," agreement of February 5th, 1908? A. I made the suggestion to the lines that they should do this; it was quite my own suggestion, because of our relationship with the railways where it requires so much detail work, it was thought to have a meeting of the Continental Lines to handle some matter which also interested the British Lines, was simply a waste of time, and if one meeting attended by all could be held the business was expedited.

938

Q. You knew at that time, did you not, that there had been a general pool agreement which took in members of the Continental Conference and the members of the North Atlantic Conference?

Mr. Spooner: Object to the question as incompetent and irrelevant.

A. I had heard that there had been an arrangement in Europe during that year, but I am not at all certain that the lines interested in our work here were the same as the lines interested in the work in Europe.

Q. Have you ever looked at the pool Agreement "AA"? A. I have never had a copy of "AA."

Q. Have you ever seen it? A. I have seen it, but I think I have never read it through.

939

Q. Have you ever observed who the parties to it were? A. No, I have not particularly done so.

Q. Will you look through it and see if there are any parties to that agreement which were not members of the two conferences that you speak of? A. This contract "AA" has a less number of lines than our work in America.

Q. Just confine your answer, if you will, to my question? A. For instance, the conference work in America is participated in by—

Q. Just confine yourself to the question (question read)? A. They were all members.

Q. Were there any members of the Continental Conference in 1908, which were not members of this agreement, and if so, what were their names? A. No.

Q. Were there any members of the North Atlantic Conference in 1908, which were not parties to this agreement, and if so, what were they? A. Wait a minute, I am wrong; yes, the Austro-Americano is a member of the Continental Conference; I don't see its name here.

941 Q. You knew there was an agreement with the Austro-Americano, did you not, along these same lines?

Mr. Spooner: Objected to as irrelevant and incompetent.

A. I don't think so.

Q. You never heard that at all? A. I have heard it was made later.

Q. Were there any members of the North Atlantic Conference who were not members of this agreement or parties to this agreement?

A. "AA"?

942 Mr. Spooner: Same objection.

Q. Yes, in 1908? A. The records will show; I think there were.

Q. What were they? A. I don't remember, but I think so.

Q. You cannot recall any lines which were members of the North Atlantic Conference which were not members of this agreement? A. I think some of the Canadian lines were not members; I think some of the Canadian lines were then members of the Continental Conference or North Atlantic Conference here, whose names are not found in that book.

Q. You knew those Canadian lines were parties to a special agreement covering Canadian traffic, did you not? A. I don't think I did.

Q. Never heard of it? A. I did; I have heard of it, but it was not coincident with this agreement.

Q. Prior to this agreement "AA," Exhibit 3, did you know of any agreement between the members of the Continental Conference and the members of the North Atlantic Conference in regard to the division of steerage business? A. Here?

Mr. Spooner: I make an objection.

Q. Anywhere? A. I am not sure that there were; I don't believe there were.

944

Q. Then, so far as your information went this is the first? A. This is hearsay pure and simple.

Q. And so far as your knowledge and information goes of this agreement "AA," that was the first agreement in which there was a provision for division of steerage business between the members of the Continental Conference and the members of the North Atlantic Conference? A. The members of the North Atlantic Conference, if you mean the lines in America, and the members of the Continental Conference, if you mean the lines in America, have never had any arrangement in regard to pooling traffic.

945

Q. I don't understand, Mr. Sandford, that the Cunard Company or the White Star Company have different corporate existences in America from what they have in Europe, do you? A. I do not either.

Q. What do you mean then by the lines in America not having any agreement, but that the lines in Europe may have an agreement? A. The agreements in respect to business done in America have been concerning the division of the traffic.

Q. This particular agreement "AA" concerns both the east and westbound traffic in steerage passengers

from America to the Continent and points in the British Isles, does it not?

Mr. Spooner: I object to this as incompetent. The agreement is in writing; it is the best evidence.

A. The agreement was not made in America and it is confusing to me to have to answer a question which refers to a conference which is of American formation and management; it is something which was done in Europe and has nothing whatever to do with the American Conference—

Q. Go back to the original question?

Mr. Spooner: I object to the question on the ground that the best evidence of what the agreement effects is the agreement itself, and that it is incompetent to rely upon this witness for a construction of it.

Q. Do you know of any other agreement prior to the agreement "AA" in which the lines which were members of the Continental Conference and the North Atlantic Conference shared *pro-rata* the steerage business in which they were engaged? A. As far as I know the membership in the Conference maintained in America was not always the same as the membership in the various arrangements that exist in Europe; I am therefore not able to answer your question categorically.

Q. Answer it the best you can; do you know of any earlier agreement than this? A. You have shown me an arrangement made back in 1892, which seems to be an answer to your question.

Q. Then your answer is that from 1892 down, there has been such an arrangement? A. I don't know.

Q. Then this is the earliest agreement of which you have any knowledge? A. You showed me an

agreement made here in 1892, which concerns both—

Q. Excluding any information which you may have derived from the court room, or from the exhibits which have been offered in evidence, have you any information as to any earlier agreement? A. I have no definite information from which I would testify.

Q. At the time that agreement "AA" was formed, do you recall whether or not the fact of the formation of that agreement was communicated to you? A. I heard of it, certainly.

Q. Do you recall whether or not there was any discussion as to the action which should be taken under it at the meeting of the Continental or the North Atlantic Conference, or the American Atlantic Conference? £50

Mr. Spooner: Except enquiry by him.

A. The matter may have been referred to, but I am not sure at all anything done in Europe required any joint action in America.

Q. That is not the question; the question is whether there was any discussion at that time? A. There may have been informal resolutions; that you can see in the record.

Mr. Spooner: I want to submit to you that you ought to make those questions sufficiently definite to afford some opportunity, if the interests of the defendants require it, to contradict it; I submit that as a matter of fair play. 951

Mr. Derr: I am simply laying a foundation; I will be specific enough in a minute. I offer in evidence a letter of date of February 7th, 1908, in the letter press copy book of the Holland-Amerika Line.

Mr. Spooner: I object to that as incompetent on behalf of the Canadian Pacific Railway Company.

*Lawson Sandford*

952

Mr. Bullowa: Of course, my general objection carries to this letter.

Mr. Dorr: Mr. Burlingham, so as not to deface your book suppose we have it simply referred to as of the date, without marking the particular page?

Mr. Burlingham: That is satisfactory to me.

Mr. Beers: Note the general objection that it is immaterial, irrelevant and incompetent.

Letter marked Petitioner's Exhibit 24 and read.

953

Q. E. B. and W. B. means eastbound and westbound? A. Probably.

Q. Did you make any memorandum? A. If I did it was in the record; I don't remember it.

Q. What did you do with the record, if you did make it; did you preserve it? A. Copies were distributed for the lines.

Q. Did you preserve a copy of it yourself? A. Unquestionably.

Q. And in what form did you preserve it? A. From the regular record.

Q. Did you keep a special minute book? A. On the files, yes.

954

Q. Can you recall whether that meeting was a meeting of the American Atlantic or the North Atlantic or the Continental? A. I told you that the American Atlantic Conference was not formed until June, 1908.

Q. So that it may have been a joint meeting of the two? A. I don't remember; I will have to look it up if I can.

Q. Did you keep the minutes of general meetings distinct from each other? A. Each one was kept by itself intact.

Q. I show you certain papers which purport to be minutes of the American Atlantic Conference, and



of the Continental Conference, and ask whether these papers are in fact minutes of the American Atlantic Conference and of the Continental Conference as kept by you? A. They are.

Q. Have you got the minutes of that particular meeting? A. I have no minutes whatever any more; I am no longer connected with the conference.

Q. Are the minutes of the meetings that is referred to in the last exhibit introduced by the Government among the minutes which I now show you? A. I don't know without looking at it.

Q. Look at it and ascertain. Do you recall whether or not you turned these particular minutes over to the counsel for the Government? A. I don't know. 956

Q. Do you recall turning over certain minutes? A. I turned over whatever was asked for.

Q. Did you turn over these papers? A. That is over two years ago; it is hard to remember.

Q. Did you turn over these papers? A. I think so; they seem to be a set I made up.

Q. Did you at that time turn over any minutes of the North Atlantic Conference? A. I don't remember. Mr. Pitkin came down to the conference office and was given access to everything he wanted.

Q. Do you recall whether you left any minutes of the North Atlantic Conference in that office when you left? A. I do not know. 957

Mr. Dorr: I will offer these for identification.

Marked Petitioner's Exhibit 25 for identification.

Q. Are these the minutes of the Mediterranean Conference (handing witness paper)? A. They are minutes of the Mediterranean Conference.

Mr. Dorr: I will offer these for identification.

Marked Petitioner's Exhibit 26 for identification.

Mr. Dorr: I offer in evidence letter dated May 28th, 1908, addressed to the Holland-Amerika Line, Rotterdam, from the Holland-Amerika Line in New York.

Mr. Beers: Same objection. It is immaterial, irrelevant and incompetent.

Marked Petitioner's Exhibit 27.

Mr. Dorr: I offer this in the first place as an admission by the Holland-Amerika Line to the facts stated; I also shall urge that it is admissible as proof of the facts stated therein if it *per se* is established by other proof and the Holland-Amerika is shown to be one of the conspirators; in that event I take it that it is a declaration made in the course of conspiracy and is, therefore, admissible as proof of the facts stated against the other party.

Mr. Burlingham: I call your attention to the fact that in this Exhibit 25 you not only have minutes of the American Atlantic Conference, but you have some minutes tacked on of committees; do you want those in too?

Mr. Door: I will ask the witness if he can identify them.

Q. I show you what purports to be the minutes of a standing complaint committee of the Continental Conference? A. Yes.

Q. And I ask whether these were minutes produced by you? A. They were.

Q. What is the standing complaint committee of the Continental Conference or what was it in 1908 and thereafter? A. A meeting of the passenger managers was held occasionally to act upon complaints against agents and to dispose of them.

Q. And these were the minutes of those meetings?

A. These were the minutes of those meetings.

Mr. Dorr: I ask that those be considered part of Exhibit 25 for identification.

Q. Mr. Sandford, do you recall anything about the appointment of a so-called small committee by either the Atlantic Conference or the Continental Conference or the North Atlantic Conference on or about May 28th, 1908? A. Yes.

Q. Were you present at a meeting at which such a committee was appointed? A. I am not sure I was present; I had nothing to do with the work.

962

Q. Do you recall at which of these conferences such committee was appointed? A. Not at any conference held in New York.

Q. Are you sure of that? A. I am fairly sure of it.

Q. Let us see if this will refresh your recollection (showing witness letter book)?

Mr. Beers: I object because the book shown is not yet in evidence.

A. That is very plain.

Q. Does that refresh your recollection? A. No, it does not refresh it particularly.

963

Q. Does it make you question the accuracy of it? A. I don't question the accuracy of it.

Q. Do you think that the statement in this letter "Immediately upon receipt of the second cable, a meeting was held by the general managers and passenger agents of the different lines, and the last cable was taken up first. As this cable is very explicit, only little discussion took place, the main point being to appoint a small committee for the selection of the competitive steamers. This committee consists for the present of three members; Mr. Winter of the North

German Lloyd, Mr. Farley of the I. M. M. Co. and our Mr. Nyland; the passenger managers and will serve in rotation."

Mr. Spooner: You don't know which of these conferences that refers to?

Q. Do you know? A. I can't tell you.

Q. Seems to have been one of them? A. I don't think it was a conference meeting, judging from the text.

Q. "Immediately upon receipt of the second cable a meeting was held by the general manager and passenger agents of the different lines and the last cable was taken up first."—

Mr. Spooner: Doesn't the cable say, Mr. Dorr?

Mr. Dorr: It does not say which conference.

Q. "Immediately upon receipt of the cable a meeting was held by the general managers and passenger agents. As this cable is very explicit, only little discussion took place"—do you say that that was not a transaction of a conference? A: I am not sure that it was.

Q. Well, let us go on, "Subsequently, the first cable was taken up and the apparently interminable question of Zotti's disqualification laid before the lines" &c.; does that refresh your recollection at all? A. No.

Q. Look at your last cable, "Atlantic conference lines are unanimously agreed that under present conditions it is highly essential that the conference regulations should be strictly enforced against agents and request New York Conference to act accordingly, and in case of doubt refer same to arbitration." Now, here is a cable asking that the New York Conference take certain action, action that was then within the scope of the powers of that conference, was it not?

A. No, my hearsay knowledge is that was action taken abroad which the American representatives carried out.

Q. Do you mean to say the New York Conference—it was not part of their duty to enforce against the agents conference regulations?

Mr. Spooner: I object to this as cross-examination by the government of its own witness.

A. Their own conference regulations, yes.

Q. What regulations do you take it they referred to? A. I take it from the text that that is a *bona fide* letter, that they are sending out a small committee to meet competition.

968

Q. What has that got to do with disqualification of Zotti? A. That was a sore point with lines for a long time because he was thought by some to be a demoralizer—

Q. Wasn't that a matter of discussion amongst your New York conference A. A great many times.

Q. And by this letter it would appear that after this cable had been received asking that the New York Conference should strictly enforce the conference regulation this matter of Zotti's disqualification was taken up; now, it would appear that that was a transaction at the New York Conference would it not? A. I will look at the record if I may have access to the conference records and see what they are on the subject; that is over four years ago.

969

Q. Looking at it you would interpret it that way would you not, that this was a matter that had been discussed among the New York Conference? A. It has been, yes.

Q. And it was on that occasion? A. But it does not show what the meeting—who were represented or what group of lines it was a meeting of.

970

Q. After having read that letter are you still prepared to say that you think the appointment of a small committee for the selection of competitive steamers was not taken up in the New York Conference? A. It was certainly taken up in New York and as I understand from hearsay it was to carry out action taken abroad.

Q. Was it taken up in conference or in a conference which you were secretary of if you cannot recall which one? A. It does not say where it was taken up; it doesn't say where the meeting was held.

971

Q. You are prepared to say then it was not a question of selecting a small committee to select fighting ships and was not taken up at any meeting of the conference of which you were secretary?

Mr. Spooner: I object to it on the ground that counsel is cross-examining his own witness.

972

Q. What is your answer: Are you then prepared to say now, after having read this letter, that the question of the appointment of a small committee to select fighting or competitive steamers was not taken up at one of the conferences which you have mentioned and of which you were secretary in New York on or about May 28th, 1908? A. The mere fact that a meeting has been held does not necessarily say that it came within my cognizance, and I have replied that if a meeting did take place four years ago, and I am asked to try to remember offhand what happened four years ago, which is hard for me to do, I believe that the action referred to in that letter which I now see was to carry out something that had been prescribed abroad and was not the action of the conference of which at that time I happened to be secretary.

Q. Do you say then, get it definite Mr. Sandford, I understood you previously to testify that if there was

the appointment of a committee to select fighting ships on or about May 28th, 1908, it was not at a meeting of the New York Conference of which you were secretary; did I correctly understand your testimony; is that your testimony? A. I think I testified that a great many things might be done by the steamship representatives in America which would not be under my knowledge or control in any way whatsoever.

Q. Do you now say that the New York conference did not appoint a small committee to choose fighting ships on or about May 28th, 1908? A. I would say that I imagine—

974

Mr. Spooner: Not what you imagine what you know.

The Witness: All this is hearsay. I am asked about it—I am asked to go into a lot of things.

Q. Do you say you were not present at such a conference? A. I don't say I was not present.

Q. That is what I am trying to get out Mr. Sandford? A. That is was necessary of a conference of which I was secretary.

Q. Was there the appointment—was a small committee appointed at a meeting of the conference at which you were present to select fighting ships? A. I may have been in the room, yes, but I may not have been in attendance at the meeting.

975

Q. Is that a matter which in the ordinary course of business you would have recorded in your minutes? A. I don't think so.

Q. It would not be? A. I don't think so.

Q. Did you learn either at that time or subsequently from one of the agents of the defendant lines that a small committee had been appointed to select fighting ships? A. Yes, I knew a small committee existed.

Q. From whom did you learn that? A. I don't remember who told me or how it came about.

976

Q. Do you recall who the members of that committee were? A. I have just had them read to me.

Q. Were they the members? A. I imagine so.

Q. To your recollection? A. I don't recollect, but I imagine so.

Q. Mr. Nyland, was he a member? A. I don't know, except that I read in this book the names.

Q. You have no recollection about that, independent of what is in the book, as to who were members of that small committee? A. I know that they are passenger men and had probably served on such a committee.

977

Q. Have you any recollection, independent of what is in this book, as to who were the members of this small committee? A. I think they probably were the members of the committee.

Q. Have you any recollection? A. It is coming to me better now that I have some data to remember things; that happened over four years ago.

Q. What is your recollection now. A. I would not care to testify under oath that they were or were not.

Q. Have you recollection, faint or otherwise? A. They probably were; I would rely entirely on the record, not my mind for those things.

978

Q. Do you recall that certain ships were designated as fighting or competitive ships by these small committees, from time to time after May 28th, 1908? A. I know that they were by hearsay, because I had nothing to do with the small—

Q. Did you say that they had not? A. I had nothing to do with this small committee work.

Q. From whom did you hear that the fighting ships had from time to time been appointed? A. A steamship line notified the conference for mutual information whenever a rate was changed, and in that way I knew when special rates were made to meet competition.



Q. And the name of the steamer which had been selected? A. The name of the steamer and the rate.

Q. You would never receive any direct communication from the members of that committee that a certain ship had been selected? A. If I did I stopped it because I did not care to have anything to do with it; I had too many things and it was routine.

Q. That is, you did not permit them to tell you the name of the ship they had selected? A. It was not a part of my conference work.

Q. Did the small committee make any reports to the conference in general as to the selection which it was making? A. No, but I think they informed the lines interested. 980

Q. Was there any discussion in the conference itself as to the selections which the small committee made from time to time? A. There was discussion among the lines from time to time whether a certain ship would be efficient to meet competition of passenger steamers.

Q. That is as to whether it would be a suitable ship to select as a fighting ship? A. Whether it happened to be sailing at a time which was suitable.

Q. Did you make any record in your conference minutes as to those discussions? A. No, there was no record on the conference about the matter as I recall. 981

Q. Did you keep any records of the ships which were in fact selected, the dates of their sailings and the rates which were charged? A. Yes, in the regular record containing the changes in rates of all of the lines.

Q. Where is that record, is that in permanent form? A. I think that the regular file is maintained and has been for many years.

Q. And that file was kept by you as secretary of the conference? A. It was kept in the conference office.

982

*Lawson Sandford*

Q. And that file, I suppose, was turned over by you to the conference? A. Yes.

Adjournment taken until Wednesday, June 19, 1912, at 10:30 o'clock A. M.

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UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

983

THE UNITED STATES OF AMERICA,  
Petitioner,  
against

HAMBURG-AMERIKANISCHE PACK-  
ETFAHRT - ACTIEN - GESELL-  
SCHAFT and others,  
Defendants.

New York, June 19th, 1912.

Before Charles Elliott Pickett, Esq., Examiner.  
Hearing resumed pursuant to adjournment.

984

Appearances:

Henry A. Wise, Esq., Goldthwaite H. Dorr, Esq.,  
Henry A. Guiler, Esq., John S. Bradley, Esq., for the  
petitioner.

Messrs. Burlingham, Montgomery & Beecher, by  
Charles C. Burlingham, Esq., and Norman B. Beecher,  
Esq., for The Anchor Line, Ltd., *et al.*

Messrs. Choate & Larocque, by Nelson Shipman,  
Esq., for Norddeutscher Lloyd, *et al.*

Messrs. Spooner & Cotton, by L. C. Spooner, Esq.,  
for The Allen Line, *et al.*

Messrs. Lord, Day & Lord, by Lucius H. Beers, Esq., and Allan B. A. Bradley, Esq., for The Cunard Line, *et al.*

Ralph J. M. Bullowa, Esq., personally, and Walter Rogers Deuel, Esq., for Russian East Asiatic Company, *et al.*

LAWSON SANDFORD, recalled:

*Direct-examination by Mr. Dorr:*

Q. I was asking you yesterday about the designation of the so-called small committee by the American Atlantic Conference in New York; what is your recollection on that point this morning? Do you recall whether or not a small committee—a so-called small committee—was designated by the American Atlantic Conference in New York in about May, 1908, or subsequent or prior thereto? A. My recollection is the same as yesterday, that the so-called small committee was designated by action taken abroad and not by action taken in America. 986

Q. According to your recollection then the statements contained in the letter of May 28th, 1908, which was shown to you yesterday, Exhibit 27, are not accurate as to the appointment of a small committee at a hearing in New York? A. My belief is, as I said yesterday, that that was action of the representatives in America of the parties to the arrangement in Europe, not conference action by the Americans. 987

Q. And that that selection was made at a meeting of the conference? A. I am quite sure it was not made at a meeting of the conference.

Q. Are you quite sure that the members of the conference were not present at the time that selection was made? A. I am trying to recall whether the meeting was held in the conference rooms, but I am not clear on the subject.

Q. Can you suggest any other place where it might have been held? A. No.

Q. The only place you can think of where such a meeting would be held would be in the conference room, is that right? A. Not at all necessary; they may meet, interested groups of lines, on various subjects elsewhere.

Q. Do you take it from reading this letter that there were two meetings held, one in which the selection of the small committee was made and another in which the question of the qualification or disqualification of Mr. Zotti was taken up?

989

Mr. Spooner: I object as cross-examination of his own witness, and incompetent as calling upon the witness to construe a letter and to give his opinion as to what it means.

A. It would appear from the text of the letter that both subjects must have been discussed at the same occasion.

Q. And the question of the disqualification of Zotti to act as an agent would be a matter within the purview of the American Atlantic Conference, would it not? A. Yes, I think the question of the disqualification of Zotti originated considerably prior to that time and from the context of the letter it may have been incidentally referred to.

990

Q. Do you recall at this meeting as it appears from this letter, it took up two matters arising from two cables each purporting to have been received from Mr. Peters in London, the first cable relating to the enforcement of the conference regulations against agents and containing a request that the New York Conference act accordingly; do you recall that this letter indicates that that cable was taken up and action taken thereon?

Mr. Spooner: Was that the letter from the Holland American Conference to members here?

Mr. Dorr: Mr. Gips—

Mr. Burlingham: Mr. Dorr, have you shown that he attended any such meeting?

Mr. Dorr: He couldn't say whether he had or had not yesterday; he said it was something which he could not swear to positively one way or the other. I think he said his recollection was coming back to him—

The Witness: I didn't say my recollection was coming back; it was only— 992

Mr. Burlingham: Do you understand what the question is?

The Witness: His question now appears to be—

Q. Just answer the question (question read)?

Mr. Spooner: I make the same objection.

A. I am sorry, but I cannot recall; I will have to refer to the letter.

Q. Where is the letter? If you will, read the whole letter through, Mr. Sandford, if it is necessary? A. The letter reminds me of this, that the lines considered among themselves—whether they did it in the conference rooms I am not prepared to swear one way or the other—measures to enable themselves to maintain the discipline of their agents against outside competition. 993

Q. Just answer this question; does the reading of this letter now recall to your mind that the agents of the various lines who were members of the conference discussed in the conference rooms or elsewhere, the two cables which are referred to in that letter, or the subject-matter of them? A. I am sorry, but I cannot give very good testimony on it.

994

Q. You have no recollection as to whether any such discussion was held or not? A. The letter is certainly very sound in its statements, and I am quite prepared to refresh my memory from it and presume that that was one of the incidents of the period, but it is over four years ago.

Q. So far as your recollection goes then, so far as you have any, it is in accord with the statements in that letter? A. In a general way, yes.

995

Q. And you will notice that the cable which was first referred to in that letter received from Mr. Peters, whom I think you testified yesterday was secretary of the steerage pool abroad, requests the New York Conference to take action? A. Yes.

996

Q. Do you know of any other New York Conference to which that could refer other than the American Atlantic Conference of which you were secretary, or at the meeting of the Continental Conference and the North Atlantic Conference? A. The New York Conference would probably be a convenient designation of the cable. The North Atlantic or the Continental Passenger Conferences had in membership all of the passenger lines and all of the ports, not necessarily New York alone, therefore it could not have been a conference meeting to be held in New York unless all of the members of the conferences were present.

Q. Just answer my question. Do you know of any other place to which that designation "New York Conference" could refer other than the American Atlantic Conference of which you were secretary, or joint meeting of the Continental Conference and the North Atlantic Conference, of which you have stated you were also secretary, and which you have also stated was composed of the same lines as composed the American Atlantic Conference? A. I construed the cable to mean—

Q. Just answer that question? A. My construction of the cable—

Q. Now, you answer that question yes or no? A. I cannot answer yes or no—

Q. What is there in it that you cannot answer yes or no? A. It is rather involved for me to answer yes or no; I would have to make an explanation.

Q. What is there in the question which is inaccurate or misstates what you have testified to.

Mr. Spooner: He says he cannot answer the question categorically, and he is not obliged to do it.

998

Q. I am asking you what there was in it that was incorrect? A. I feel, Mr. Dorr, my answer must be that I construed the cable to mean—

Mr. Spooner: You mean to construe the cable? I object to your construing the cable; you have not been asked about that.

Q. What is there in that language that prevents your answering it yes or no? A. It is simply the technical way in which the business was to be done constantly by the various lines.

Q. Do you know of any other conference which might be understood, might be meant by that New York Conference, other than the conferences employed here? A. Yes, it would mean in my judgment a meeting of the representatives in America of the parties to the arrangement referred to in Europe.

999

Q. Did such meetings go under the name of the New York Conference? A. No.

Q. Did you ever hear them describe it in that way? A. No; as a matter of fact there is no New York Conference.

Q. Then whatever it might be though it might have meant some other conference or some other meeting,

1000

*Lawson Sandford*

it would ordinarily mean to your mind a meeting of the Atlantic Conference or a joint meeting of the Continental Conference and the North Atlantic Conference, would it not? A. To my mind that cable meant a meeting of the American representatives of the interested lines.

1001

Q. And the interested lines were the members of the American Atlantic Conference who were also members of the Continental and North Atlantic Conference, were they not? A. Yes, but there were other lines as I understand it who were not members of the arrangement in Europe who were members of the American arrangement.

Q. What lines were those at that time, May, 1908? A. Some of the Canadian Lines, the Austro-American and probably the French Line; I am not sure that the French Line was a party to the arrangement in Europe which we are discussing.

Mr. Spooner: At that time?

The Witness: At that time.

1002

Q. I call your attention to the appendix three to the agreement "AA" and ask you whether that refreshes your recollection as to the French Line being a member of the pool agreement? A. That is true, I didn't see it at the beginning of the document.

Q. It does refresh your recollection, does it not? A. No, my recollection is naturally not very clear for I have not had jurisdiction over those agreements.

Q. You do not desire to be understood as testifying now that the French Line was not a party to agreement "AA"? A. I have never tried to testify that it was not; I simply did not see the French Line there.

Q. You know that the French Line was a member of the New York Conference but it was not a member of the pool agreement "AA"? A. Merely from read-



ing the list of lines said to be parties in the beginning of the document.

Q. And your information was merely based on that?

A. Surely.

Mr. Spooner: You do not claim that you have shown the French Line became an original member of the Agreement "AA", do you? You have had evidence together in this proceeding for a long time that it became a member before this suit began.

Mr. Dorr: We have not had this appendix three until produced by Mr. Beecher yesterday. That was not in the copy of the Agreement which was produced for the Government in the previous investigation, and it was not until we insisted upon the production of this original yesterday that we got it. There are two things which are in this Agreement "AA" produced yesterday which are not in the copy of the agreement which has heretofore been produced for the Government. If a complete copy of Agreement "AA" had been produced, I have no doubt the French Line would now be a party of this proceeding. 1004

Mr. Burlingham: Who was ever asked to produce that agreement? 1005

Mr. Dorr: A director of a certain line which is now a defendant and who is now dead; I don't see any occasion to mention the name.

Mr. Burlingham: None of the papers, we claim, were ever asked to be produced until we received the subpoena and when we received the subpoena we produced it.

Mr. Dorr: I am not casting reflections on anyone; I am merely stating the fact in response to Mr. Spooner's suggestion that the French Line should have been a party to this

1006

*Lawson Sandford*

proceeding. No party who is present before this Court was subpoenaed to produce it.

Q. As to the Canadian Lines which you mentioned as being members of the Conference, but not parties to this Agreement, what were those lines? A. In 1908?

Q. In 1908? A. I don't see the Donaldson Line mentioned in the arrangement; I think the Donaldson Line was a member of the Conference.

Q. I call your attention to the first page of the Agreement? A. You asked me to read the contract "AA". I don't see this (examining Agreement "AA").

1007

Q. After having looked at the second page of Agreement "AA" have you any question that the Donaldson Line was a party to this agreement? A. I have no question about the Donaldson Line.

Q. What other Canadian Lines were there that were members of the Conferences of which you were secretary who were not parties to this Agreement which related to the North Atlantic Steerage Traffic? A. I was under the impression I was not correctly designating the Donaldson Line's position; I think now from reading the document that the Donaldson Line was present but not really a party.

1008

Q. It appeared that the Donaldson Line took part in this Conference, did it not, which resulted in this Agreement? A. Certainly, but I don't see its name as a party.

Mr. Spooner: Why do you call that a Conference; what conference?

Mr. Dorr: The London Conference.

Q. What other lines have you in mind, if any? A. The Austro-Americano.

Q. Do you know whether or not that was engaged in the North Atlantic Steerage Traffic in 1908? A. Yes, by way of the Mediterranean.

*Lawson Sandford*

1009

Q. Did they thereafter become a member or a party to this Agreement? A. I am not informed.

Q. Never had any information about that? A. I am not informed about it.

Q. You have had no information from anyone connected with the defendant lines as to whether or not the Austro-Americano Line has or had, either in 1908 or thereafter, an arrangement with the other lines mentioned in the Agreement "AA"? A. My information is from Mr. Phelps, the agent of the Austro-Americano, that his Company in some way was Associated with these other lines, but the precise association I am not familiar with.

1010

Q. Do you recall the provision in the so-called Beschlusse II, that six per cent dividends of the Austro-Americano Lines were to be guaranteed by the lines that were members of this conference?

Mr. Spooner: I object to that as not within the pleadings and therefore irrelevant and incompetent.

A. I am familiar with it.

Q. Were there any other lines? A. The only way I can be sure would be to take the list of what you construe the parties to Agreement "AA" and verify that with an official list of the members of the Conference in 1908.

1011

Q. Have you such an official list in your possession? A. No.

Q. Now, Mr. Sandford, to come back to that letter of May 22nd, 1908, Exhibit 27, from that letter, which I think you have said you regard as accurate, in substance it appears that Secretary Peters cabled over to New York requesting that the discipline of agents should be taken up by the New York Conference, did he not? A. That is very evident.

1012

*Lawson Sandford*

Q. And it appears from that letter that the question of the enforcement of the rules against agents and the disqualification of Mr. Zotti in particular was considered at a meeting held in New York at which the representatives of the various lines did appear to have been parties to the Agreement "AA"? A. Yes.

Q. You have also testified to that? A. Yes.

Q. Now, the enforcement of rules as to the disqualification of agents was one of the matters which was within the purview of the American Atlantic Conference, was it not, and on which they repeatedly took action? A. Yes.

1013

Q. With those facts in mind, have you any question that the meeting in which the question of the enforcement of the rules of the Conference in regard to agents in which the question of Mr. Zotti's disqualification was taken up was in fact a meeting of the American Atlantic Conference? A. I would not care to testify under oath to that effect but—

Q. You would not testify that it was; you certainly would not testify that it was not, would you, Mr. Sandford? A. I mean I wouldn't care to testify of my knowledge and belief, but on hearsay or on my recollection. A meeting of the New York representatives would naturally mould the general feeling of the trade.

1014

Q. That is not my question. Have you any doubt that the meeting which it appears from this letter was held in New York in which the question of the enforcement of Conference rules was taken up and the disqualification of Mr. Zotti was discussed, was a meeting of the American Atlantic Conference? A. I think it was not a meeting.

Q. That was a matter which was regularly within the purview of the American Atlantic Conference, was it not? A. My recollection is that the so-called—

Q. Just answer my question? A. A matter of

agency discipline, yes. My recollection is that the joint work of the Continental and North Atlantic Conferences did not begin until the end of June, 1908.

Q. Prior to that time how was the joint work—how were matters which affected both the Continental and the North Atlantic Conference carried on? A. In whichever conference a matter first came up it was customary for that conference to consider it and inform the other conference of its decision.

Q. Do you take it, then, that this meeting which is referred to in this letter, was a meeting of either the North Atlantic or the Continental and not a joint meeting of the two? A. I think that meeting was unquestionably one arranged by both the Continental and North Atlantic Line's American representatives; the Zotti case had probably up to that time been dealt with purely by the Continental Conference.

1016

Q. But at this time, under that arrangement as it existed on February 5th, 1908, it was a matter of common concern for both the North Atlantic and Continental, was it not? A. It was at all times a matter of common concern because Zotti represented practically all the Trans-Atlantic Lines.

Q. You attended that meeting as secretary? A. I may; I may not; I don't know.

1017

Mr. Spooner: What meeting was that?

Mr. Dorr: The meeting last referred to in which the question of Zotti's disqualification was taken up and in which the other matter was taken up.

Q. Now, let me ask you as to your relations as secretary of the Conference to this small committee; what were your relations; put it in your own words?

A. My relations were not to have anything to do with the committee; the committee in the Conference or group or lines would handle its own work.

*Lawson Sandford*

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Q. That is, you had nothing officially to do with the small committee? A. I personally had not.

Q. You never had any official relations in regard to it whatever? A. Communications may have come to me but I handled them in the routine.

Q. In what capacity would they come to you? A. Simply as a sort of clearing house of information for the steamship lines.

Q. What was your cable address? A. At that time I think it was "Memorable."

Q. Are you sure that it was not "Tranconfer"? A. It may have been; we had two cables.

1619

Q. I show you a certain cablegram, or what purports to be a copy of a certain cablegram of June 17th, 1909, and ask you whether you received that? A. That would be a cable to the Conference office, and if it referred to—

Q. It would come to you, would it not? A. Not necessarily to me personally; I had a staff of eight people.

Q. Were you the head in charge? A. Yes.

Q. And as secretary of the conference that would remain in your custody, would it not? A. It would be on the files that concerned the subject.

1020

Q. Did you carry on any independent business at that office other than secretary of the conference? A. No.

Q. That is, the records which you had there were conference records? A. Yes.

Q. And you had them as secretary of the conference? A. Yes.

Q. And when I say secretary of the conference, I mean secretary of the American Atlantic and of the Continental and of the North Atlantic or the Mediterranean? A. Yes.

Q. Do you recall receiving this cablegram? A. I am quite sure that it came to the conference office.

Mr. Dorr: I offer this in evidence.  
Marked Petitioner's Exhibit No. 28.

The Witness: What date is it, Mr. Dorr?

Q. Under date of June 17th, 1909? A. I went west in June, 1909; I remember I went west near the middle of June, 1909; I don't know that I was west on that date.

Q. Do you know what minute 22 is, referred to in that cablegram? A. I think it must refer to some European minute, because we have no conference minutes on the small committee in America.

Q. Minute 22 then, you take to be a minute adopted by a conference in Europe? A. I think so. 1022

Q. How would you designate that conference? A. I am sure it must be part of the work of the European Agreement of 1908.

Q. That is the Agreement "AA"? A. Yes.

Q. And have you seen minute #22? A. I think a copy of minute 22 was sent to me and I handed it to the people concerned.

Q. So that a copy of minute 22 was at one time at any rate in this country? A. Yes.

Q. Do you recall the contents of minute 22? A. I think it was the minute adopted abroad appointing a small committee in America on the part of the European officers of the "AA" members. 1023

Q. Did you retain a copy of that minute 22 in the offices of the members of the conference lines? A. I am quite sure not, because the small committee work was not considered New York or American Conference subjects at all, simply was a subject concerning a particular group of lines with which the conference was not concerned.

Q. And you as the secretary communicated this minute 22 to the various lines? A. To the line which it concerned.

Q. In the United States? A. Yes.

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Q. And those lines were the members of the Agreement "AA"? A. I don't remember now definitely whether I did anything in fact on that subject; I am simply speaking from general recollection.

Q. You received minute 22 as secretary of the New York Conference, did you not? A. Not as secretary I take it.

Q. How did you receive, in your individual capacity, Mr. Lawson Sandford? A. No; simply in the capacity of a clearing house for general information.

Q. That is the capacity in which you received it, is it? A. Yes; that has been the work I have done largely.

1025

Q. Did you receive a salary for being a clearing house for general information? A. The place is largely a clearing house for general information.

Q. Where did you receive your salary from? A. I received my salary and expenses from the individual lines making their own individual payments.

Q. Who were members of the conference? A. Who were members of various conferences.

Q. Did they prescribe any duties to you other than as secretary of the conference? A. The formal duties prescribed were those mentioned, for instance, in 1896 or 1897 North Atlantic Minutes which you had yesterday.

1026

Q. I don't think we had those? A. 1896 or 1897.

Q. And those are the duties which you had and which you received a salary for? A. Yes; those were the regular duties which constituted my appointment, but my office acted as a sort of general clearing house for information on matters of general news to any one who wanted it.

Q. Who is the secretary referred to in this cablegram? A. A code word for Mr. Peters.

Q. Who is the secretary of the—I think you said of the conference—abroad? A. Mr. Peters in Jena.



Q. He was the secretary of the conference abroad?

A. He was secretary as I understand it of all of the arrangements abroad concerning Continental and British Lines.

Q. And he sent this cablegram to you to be communicated to the various lines? A. Yes.

Q. Who were members of the same agreement? A. Yes.

Q. In communicating the action of the conference abroad to the members of the New York Conference you were made the conduit for that information? A. Occasionally matters from the other side were sent to the conference office in New York for distribution, but not regularly.

1028

Q. To come back for one question to this minute 22; did you receive a letter enclosing that minute? A. Probably so, yes.

Q. Did you preserve that letter if you received it? A. Probably so; or passed it to the line.

Q. The original letter would be addressed to you in the ordinary course, would it not? A. It would be addressed to the conference, yes.

Q. And that letter in the ordinary course you would have left among the conference papers when you ceased to be secretary? A. Yes.

Q. And so far as you know none of those conference papers were sent out of the country? A. None.

1029

Q. None had been removed from this country up to the time you ceased to be secretary? A. None.

Q. That is the only definition of your duties that was ever made (referring to 10 of the general rules for steerage passengers in Petitioner's Exhibit 23)? A. Yes; that is typical.

Q. Mr. Sandford, I show you what purports to be a copy of a cablegram under date of September 17th, 1909, addressed to "Tranconfer" signed secretary, and ask you whether you received that? A. I think

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I recall that these copies were prepared for your office some years ago.

Mr. Dorr: I offer these in evidence.  
Marked Petitioner's Exhibit No. 29.

Q. Did you preserve copies of all the cablegrams received or sent by you? A. Up to the point where they seemed to be of any consequence and afterwards to relieve the accumulation they were destroyed.

Q. When did you destroy the accumulations? A. Probably at the end of each year we would try to strip our files of subjects that were not likely to be referred to again.

1031

Q. Do you recall whether or not any of the cablegrams of 1908 were preserved? A. It is very evident they were because we supplied them to the District Attorney on his request about two years ago.

Q. These two are under date of 1909? A. I think Mr. Dorr, we supplied Mr. Pitkin with copies of every communication the conference had exchanged with Mr. Peters during the period in which you were interested, some of which we had to write to the other side to obtain.

1032

Q. Do you recall what this cablegram refers to: "small committee. Your cable June 9—" A. No, sir; I do not. It must have referred to the general subject; there must have been some cable from the New York manager.

Q. And it had something to do with either the constitution or the operations of the small committee in New York? A. Yes; under rule 22 in Europe.

Q. Rule 22 of the London Conference? A. Yes.

Q. And did that small committee to your knowledge have any other duties than to arrange for the sailings and rates of the so-called fighting ships? A. I think the small committee's duties were to find what steps were necessary by steamers already scheduled to sail to meet the tactics of outside lines.

Q. That is, in order to protect the Cunard Line, and the Hamburg American Line, and the North German Lloyd Line, and the French Line, and the Holland Amerika Line from competition of such a line as the Northwest Transport Line it was necessary for them to adopt defensive measures? A. Yes.

Q. And the International Mercantile Marine Lines; and in order to protect themselves against this threatening danger from the Northwest Transport Line they conceived it necessary to adopt defensive measures to put on defending ships, is that what I understand the idea was, Mr. Sandford? A. There has been a great deal of discussion on the subject by much better posted and brighter minds than mine; I simply know from my own experience that the protection of the traveling public—

1034

Q. Never mind that? A. You asked for an opinion.

Q. No; you were volunteering something.

Mr. Spooner: Let him finish.

The Witness: I don't want to offer anything—

Q. I think you are offering something beyond what my question calls for? A. I understood you wanted in a sort of sarcastic way to have me construe the enormity of opposition and I know from my personal experience of all my life not only in the conference, but employed by—

1035

Mr. Dorr: I have a right to introduce an objection to this witness.

Mr. Burlingham: You have a right to move to strike out a man's answer when he has answered.

Mr. Dorr: As soon as a witness's answer ceases to be responsive the Government has a right to interpose an objection. This witness is now endeavoring to give expert testimony

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as to a certain matter and I object to the witness giving expert testimony.

Mr. Beers: Having given your objection he is entitled to go on.

Mr. Dorr: I object to this witness proceeding to volunteer information which he claims to be his expert opinion on certain matters as to which he has not been interrogated by the Government.

Mr. Beers: With that objection on the record, Mr. Sandford, go right on.

1037     The Witness: Mr. Dorr has accused me of not trying to answer his question, but when I found out what he wants I am very glad to answer it as fully and truthfully as he pleases.

Mr. Dorr: I would suggest then that any other things you desire to add in that matter be left to the cross-examination.

Q. (Question read.)

Mr. Burlingham: You listen to the question read and then go on with your answer.

1038     Mr. Dorr: I object to counsel instructing the witness called for the Government at this time. Of course, it is quite obvious that he is regarded as a witness for the defense.

(Answer of witness read.)

Mr. Burlingham: Go on from there if you wish to.

The Witness: Well, to finish the sentence, requires that they and their agents are given equal opportunities as to rates.

Q. Now, Mr. Sandford, these steamers that you mention were designated by the small committee, were

they not, was that your information? A. In part probably, and not always.

Q. During what period were they designated by the small committee? A. I am not thoroughly posted; my recollection is not clear because I have not handled the work of the small committee.

Q. Did you as secretary of the conference have anything to do with the designation of the fighting steamers? A. No, sir.

Q. I show you a certain cablegram, or what purports to be a copy of a certain cablegram, under date of June 9th, 1909, and ask you whether that cablegram was sent by you? A. That was sent unquestionably by direction of the small committee in effect at that time; it is June, 1909.

1040

Q. Sent by you at the direction of the small committee? A. Sent at the conference office; not necessarily personally by me.

Q. You were in that conference office, were you not? A. I know, but I couldn't attend to every detail that came into that establishment.

Q. It was, however, your duty to supervise the action of your office; a cablegram of that nature would hardly be sent off without your knowledge, would it? A. Entirely so.

Q. If you were away? A. No; even if I were there. It would not be necessary at all for me to see a cable of that sort.

1041

Q. Perhaps this will refresh your recollection as to whether or not you had anything to do with that particular matter (handing witness letter)? A. Absolutely clear. A letter from the Holland Amerika Line—

Q. Never mind about the contents. Does that refresh your recollection? If it does not all right; if it does what is now your recollection as to whether you personally were concerned in the matter to which

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1042

this cablegram of June, 1909, referred to? A. It absolutely bears out what I said. It says we—

Q. I asked you whether your recollection was refreshed by that letter; do you recall now whether or not you had anything to do with the matter which is referred to in this cablegram? A. In respect to despatching it?

Q. Yes? A. No; I don't think so. I suppose the small committee, whatever the instance, sent it through the office.

Q. To your office? A. Yes.

1043

Q. And would it be sent if you were present in the office without your knowledge? A. The office has about five rooms.

Q. To whom would the small committee submit a cablegram of this sort for transmission in the regular course of business at that time? A. They probably sent it to Mr. Morse, because he handled small committee matters personally.

Q. Mr. Morse handled those matters for you? A. No; I simply presume it was handed to Mr. Morse.

Q. Where is Mr. Morse now? A. He is in the office of the conference.

Q. Is he in the offices of the conference still? A. Yes.

1044

Q. And the office is at the same address, of course? A. Yes.

Mr. Dorr: I will offer in evidence letter from one of the press copy books heretofore identified as being the letter book of the Holland America Line under date of May 24th, 1909, purporting to be signed A. G.; it may appear on the record that A. G. represents Adrian Gips.

Mr. Beers: Objected to as incompetent and irrelevant and not binding in any way upon the

*Lawson Sandford*

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defendants other than the Holland America Line.

Received as Exhibit #30.

Mr. Dorr: I now offer in evidence copy of a cablegram identified by the witness under date of June 9, 1909.

Mr. Beers: Same objection.

Marked Petitioner's Exhibit #31.

Q. I show you cablegram under date of August 3rd, 1909, and ask you whether that was received by you?

A. From the code word it was undoubtedly received and supplied to your office at your request.

1046

Mr. Dorr: I offer this in evidence; addressed to Transconfer, signed Secretair.

Mr. Beers: Same objection.

Marked Petitioner's Exhibit #32.

Mr. Dorr: I offer in evidence letter press copy of letter from Adrian Gips to the Holland American Line under date of August 3rd, 1909, on page 322 of the letter book.

Mr. Beers: Same objection.

Received as Exhibit #33.

Mr. Dorr: I offer in evidence what purports to be an original letter from the Holland American Line Home Office to the Holland American Line of New York, under date of August 12th, 1909.

1047

Mr. Beers: Same objection.

Marked Petitioner's Exhibit #34.

Q. Now, Mr. Sandford, do you recall now, after an inspection of these exhibits, do they refresh your recollection as to the fact that you were the medium of communication—your office was the medium of communication—between the small committee in New York and the secretary of the conference abroad?

A. On those occasions, yes.

*Lawson Sandford*

1048

Q. By your answer do you mean to imply that those were the only occasions? A. On such occasions.

Mr. Dorr: I offer in evidence letter press copy of April 27, 1909, from Adrian Gips on page 235 of the letter book.

Mr. Beers: Same objection.

Received as Petitioner's Exhibit #35.

Mr. Dorr: And the original letter of reply of May 4th, 1909.

Mr. Beers: Same objection.

Marked Petitioner's Exhibit #36.

1049

Mr. Dorr: I offer in evidence letter of March 29th, 1909, purporting to be an original letter from the Holland American Line, Home Office, in Rotterdam, to the Holland American Line of New York, being one of the letters identified by the witness yesterday.

Mr. Beers: Same objection.

Marked Petitioner's Exhibit #37.

Mr. Dorr: I offer in evidence letter of May 25, 1909, original letter, from the Holland American Line at Rotterdam to the Holland American Line at New York.

1050

Mr. Spooner: This is objected to and I am going to move to strike out those that have been put in.

Mr. Dorr: On the ground of lack of proof?

Mr. Spooner: On the ground that they are irrelevant and incompetent, not, however, for want of proof of authenticity or genuineness.

Marked Petitioner's Exhibit No. 38.

Q. Mr. Sandford, do you recognize the handwriting in that Exhibit No. 38? A. I don't know it.

Mr. Dorr: I offer three further letters from the Holland American Line in Rotterdam to



the New York office, one under date of August 4th, 1908, and one under date of August 31st 1908.

Mr. Spooner: I make the same objection.

Marked Petitioner's Exhibit No. 39.

Marked Petitioner's Exhibit No. 40.

Q. Mr. Sandford, in 1908, do you recall what lines were engaged in the North Atlantic Steerage business which were not members of the conference? A. Apparently from the papers we have seen—

Q. I am asking you for your recollection; if you do not recall, say so? A. I would like to have opportunity to look it up; it is four years ago.

1052

Q. Do you recall whether there are any other lines than the Russian Volunteer Fleet and the Russian East Asiatic Line? A. All established lines were in the conference; there were mushroom lines in and out of the business all the time.

Q. Never mind about your characterization of lines; just answer the question. Do you recall whether there were any lines other than the Russian Volunteer Fleet and the Russian East Asiatic Steamship Company which were not members of the conference? A. I would like to have opportunity to look that up.

Q. You have no recollection one way or the other? A. I have some recollection.

1053

Q. Then state such recollection as you have? A. I think that—

Mr. Beecher: I object. The witness has stated he is ready and willing to look it up and testify in regard to it. Now, to ask him to give the best recollection which he might have at this time, seems to me hardly fair.

Mr. Dorr: I will suggest this, Mr. Beecher, that if the witness finds that his recollection is

1054

*Lawson Sandford*

in error, I will be very glad to afford him an opportunity to correct it.

Mr. Beecher: I will say, Mr. ~~Dorr~~, that I don't think that we ought to take his time or waste our energy in getting the witness's possible recollection only to be subsequently corrected. Let the witness look the matter up and give his testimony.

Mr. ~~Dorr~~: This witness, I think, has been so many years with the conference, that even a somewhat distant recollection should be of value.

1055

The Witness: I am giving you the best recollection I can. I must take exception to your attitude—

Q. I want it; what is the best you have got? A. Every time I try to make an explanation, you shut me off—

Q. What is your recollection, Mr. Sandford? A. My recollection is very plain that the growth of the Atlantic business in the last 20 years is such that no man can remember it.

Q. Your recollection is very plain that you haven't got any recollection? A. I can if you want me to give it to you in black and white.

1056

Q. Do you now recall whether there was any other line in the North Atlantic Steerage business in February and March and April and May, 1908, which were not members of the conferences of which you were secretary, other than the Russian Volunteer Fleet and the Russian East Asiatic Line? A. It is difficult to—

Q. Do you recall any other? A. I don't think the Russian East Asiatic was running in 1908; I don't remember those things.

Q. You cannot remember whether there was such a concern at that time? A. To testify under oath—

Q. You have no recollection on the matter? A. I have some recollection.

Q. What is your recollection? A. I think there was some—

Q. What is your recollection about the Russian East Asiatic Fleet? A. I am confused by—

Q. Never mind what you are confused by, what is your recollection such as it is? A. I will have to say it in my own way. I am confused because the names of those outside lines changed so frequently and they ran for spasmodic periods and not regularly. I can't remember whether that was a mushroom line, was running under one name or another, or had been running. 1058

Q. If you have no recollection, it is a very simple matter for you to say so. Now, have you any recollection as to whether the Russian Volunteer Fleet was running in 1908? A. I think so.

Q. Have you any recollection as to whether the East Asiatic was running in 1908? A. I am mixed—

Q. Have you any recollection? A. I think it was either the Russian East Asiatic or the North-western Transport, I don't remember which, offhand; I am trying to think what lines were—

Q. Then you have no definite recollection as to whether the East Asiatic was running at that time or not? A. I think it was, but I am not sure whether it was the Russian East Asiatic or the Northwest Transport. 1059

Q. You have given us the best recollection you have; now, have you any recollection as to whether the Northwest Transport was running at that time? A. I think it may have been.

Q. What is your best recollection? A. I haven't got much recollection on it for the reasons I have stated.

1060

*Lawson Sandford*

Q. Have you any recollection as to whether the New York Continental was running at that time?

A. That's the trouble, they changed their names so often. How can I remember now, four years back?

Q. We don't care for your difficulty; we want your knowledge; if you have any, say so? A. I have very little of it.

1061

Q. Mr. Sandford, have you any recollection now as to whether the New York Continental Line was running in 1908; have you or have you not? A. You have tried to confuse me on the Russian East Asiatic and Northwest Transport and New York Continental and everything else.

Q. I have not tried to confuse you. Answer that question, and answer it without comment, if you please? A. My recollection is not—

Q. You have no recollection on the point? A. My recollection is not worth regarding when I offer to look it up.

Q. You are not the judge as to whether your recollection is worth anything; that may be a matter of opinion, but what I want is the fact of whether or not you have any recollection on that point? A. Will you state it one line at a time?

1062

Q. Do you recall whether or not the New York and Continental Line was running in 1908? A. I think it was, under that name, for several months, and then it stopped.

Q. It was running in 1908? A. Yes, it chartered steamers.

Q. Do you recall whether or not the Russian East Asiatic Line became a member of the conference? A. Yes.

Q. When was that? A. I think it was in the autumn of 1908 or 1909; I couldn't say definitely.

Q. Did you receive that cablegram (showing wit-

*Lawsen Sandford*

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ness cablegram)? A. Yes, but the year is blurred; it looks like 1908.

Mr. Dorr: I offer that in evidence.

Mr. Bullowa: I object to this as no proof of entering into any agreement, simply hearsay evidence of the worst character; I especially object to what he was informed of the action of the defendant the Russian East Asiatic Company.

Marked Petitioner's Exhibit 41.

Q. After the receipt of that cable, do you know whether or not representatives of the Russian East Asiatic Line appeared at the meetings of the conference of which you were secretary? A. My recollection is that the Russian East Asiatic Steamship Company applied in writing to the New York office of the American Conferences and it was upon that action, that application, that they were admitted to membership in the Continental Conference. If it was in 1908, I was in Europe about that time.

1064

Q. Then you have no personal recollection as to the transaction? A. No, but I remember the fact that the Russian American Line joined the conference.

Q. Did you, Mr. Sandford, ever see the agreement which is mentioned in this cablegram? A. What agreement is it?

1065

Q. That, I will have to ask you (showing witness cablegram)? A. No, I have not.

Q. Were the terms of that agreement stated to you by any person?

Mr. Bullowa: Objected to as hearsay and incompetent.

A. I have never heard the particulars of the relationship in Europe between the Russian American Line and the other lines.

1066

*Lawsen Sandford*

Q. Did any person ever state to you whether or not a certain proportion or pro rata proportion of the North Atlantic Steerage traffic was allotted to the Russian East Asiatic Lines?

Mr. Bullock: It is understood that my objection applies to all these questions?

Mr. Dorr: Yes.

A. I understood that the Russian Line was a party in Europe to their traffic arrangement, possibly in connection with the division of the third class business.

1067

Q. And that a certain proportion of the steerage business was allotted to the East Asiatic Line? A. Probably.

Q. And you obtained this information from— A. Hearsay.

Q. From the officers and agents of the various defendant lines? A. The general talk, yes.

Q. That is, among the members of your conference; do you recall any particular person who told you this? A. No, sir.

Q. Did you learn or did you hear from some source the proportion of business, steerage business, which was allotted the East Asiatic? A. I don't think

1038

I ever knew.

Mr. Dorr: I offer in evidence press copy of letter under date of August 28, 1908, from Adrian Gips to the Holland Amerika Line, Rotterdam.

Mr. Spooner: Same objection that has been made to the other letters of Mr. Gips to the Holland Amerika Company, or from the Holland Amerika Company to Mr. Gips which have been offered in evidence.

Mr. Bullock: I make the same objection, and the further objection that no letter written by an officer of the Holland Amerika Line to anybody else is binding upon the defendant, the Russian East Asiatic Steamship Company, Limited, or Johnson and Straus, there being no proof that the Russian East Asiatic Steamship Company entered into any agreement.

Marked Petitioner's Exhibit No. 42.

Q. Do you recall whether thereafter a circular was circulated among the agents, conference agents, this circular which I now show you, was it thereafter circulated among the conference agents? A. It is a regular conference circular issued in the customary manner, circular dated September 1st, 1908. 1070

Q. That circular purports to be issued, among others, by the Russian American Line; how did you obtain authority from the Russian American Line to the issuance of that circular? A. I am afraid you have not read the record. If you would read this record you would see that the situation is all defined that you are asking me to give.

Q. I show you a circular under date of September 1st, 1908, and it indicates that it appears to be signed by the Russian American Line? A. Yes.

Q. This was issued by the conference? A. It is the usual language. I can refresh my memory as to how it was done by looking at the official record (reading), "A meeting was held on the 3rd day of September, 1908, at which was present, a representative of the Russian American Line. The first action at the meeting of September 3rd, 1908, was as follows—" 1071

Q. Do you recall what member of the Russian American Line was present? A. It is stated here in the record.

*Larson Sandford*

1072

Q. I want your recollection? A. It is on the record.

Q. Mr. Sandford, if you will give me your recollection? A. I read from the record, Mr. Max Straus.

Q. Mr. Sandford, you will not read from the record unless asked to do so? A. Four years, this period, I can't remember whether I was personally present at that meeting or not.

1073

Q. Unless you have some recollection in addition to that of the written record, it is not proper for you to state what occurred at that meeting; it is subject to other proof? A. At this date, I cannot state if I was present at this meeting.

Q. Do you recall whether at that time or thereafter, Mr. Straus attended meetings of the conference in New York? A. Yes, he did.

Q. Did you make that particular minute of September 3rd, 1908? A. I couldn't say now.

Q. And you cannot vouch personally for it? A. No, it is confirmed by the chairman as a correct record.

Mr. Dorr: I offer in evidence the circular.

Mr. Beers: Objected to as irrelevant and immaterial and not within the issues.

1074

Marked Petitioner's Exhibit No. 43.

Q. How long did Mr. Straus attend the conference meetings? A. From that time up to the early part of April of this year sometime.

Q. Do you recall, Mr. Sandford, when the Russian Volunteer Fleet withdrew its ships? A. Sometime in 1908, probably mid-summer.

Mr. Dorr: I will offer in evidence letter of Holland Amerika Line at Rotterdam to the New York office under date of June 19th, 1908.

Mr. Beers: Same objection as to that, but



*Larson Sandford*

1075

the objection as to incompetency does not extend as to the genuineness of the letter.

Marked Petitioner's Exhibit No. 44.

Q. Mr. Sandford, you recall whether or not from time to time, penalties were imposed on the agents at conference lines who sold tickets for other lines, not conference lines? A. Yes, they were always given the option of choosing between conference lines and non-conference.

Q. Can't you answer that question, yes or no? A. Yes.

Mr. Dorr: I move to strike out the rest of it.

1076

Q. Just, if you can, Mr. Sandford, we will get along faster where you can answer the question yes or no; confine yourself to that monosyllable.

Mr. Dorr: I have prepared a list of minutes of the American Atlantic Conference and of the Continental Conference which I desire to offer in evidence and I suggest that you examine those outside of the court room (addressing counsel for the defense). I have no doubt they are on control of agents, but they relate to some other matters beside that.

1077

Q. Mr. Sandford, have you any recollection with regard to the making of certain arrangements with certain passenger associations? A. Yes.

Q. Do you recall when the Conference Agreement was entered into about a conference with the passenger association and what passenger association that was, which one?

Mr. Beers: Objected to as irrelevant and not within the issues.

1078

*Lawson Sandford*

A. In the latter part of the nineties, about 1897, between the United States ports steamship lines and the Western Passenger Association of Railroads.

Q. Do you recall whether or not that agreement provided for the so-called commercial allowance by the railroads to the steamship lines? A. Yes.

Mr. Spooner: That agreement is in writing?

The Witness: Yes, sir.

Mr. Dorr: I haven't it; if you will produce it.

1079 Q. How long was that agreement acted on? A. The agreement has continued ever since. The agreement has run in the intervals without any deviation.

Q. And with what passenger association was that agreement?

1080 Mr. Beers: I wish to note on the record an objection to any evidence with reference to any railroad passenger association, or any understanding or agreement between any such association and any steamship line or lines, or with reference to commercial allowances, upon the ground that such evidence is incompetent, irrelevant and immaterial, and not within the issues in this suit.

Mr. Dorr: Very well, it is understood that any such evidence is objected to on those grounds. But the government claims that such evidence is admissible on the question of monopoly, and as showing control of the whole railroad situation by the steamship companies.

A. The railroads in the Western Passenger Association territory.

Q. What was the Western Passenger Association territory if you recall? A. In general the gateways are—

Q. I think perhaps we can prove all of that in a shorter way? A. St. Louis and west of the Missouri River. There is a map which shows all the passenger associations of America; I think I sent it to you.

Q. Is that the map to which you refer (handing witness map)? A. Yes, sir.

Mr. Dorr: I offer that in evidence.

Marked Petitioner's Exhibit No. 45.

Q. Do you recall whether or not in December, 1909, there was an agreement entered into with regard to east and westbound traffic with the Central Passenger Association? A. Eastbound traffic? 1082

Q. Is this that agreement of December 3rd, 1908? A. I supplied those papers to you; those are copies of the record.

Mr. Dorr: The so-called agreement of December 3rd, 1908, is offered in evidence as one exhibit.

Marked Petitioner's Exhibit No. 46.

Q. I show you what purports to be a copy of a certain letter addressed to H. A. Eschenburg, and ask you if that is a copy of a letter sent by you as secretary of the conference? A. Yes, I supplied that to you some time ago. 1083

Letter dated November 12th, 1908, offered in evidence by Mr. Dorr.

Marked Petitioner's Exhibit No. 47.

Q. Under subpoena? A. I am not sure whether it was under subpoena or not.

Q. Are the facts correctly stated in that letter? A. I will have to read it now; I think it is.

1084

*Lawson Sandford*

Q. Read it afterwards, and if there are any matters that you desire to correct let me know. Was this letter sent in pursuance of your duties as secretary to the conference? A. I could not tell you until I read it over.

1085

Q. I show you what purports to be proceedings of a joint meeting between the railroad committee of the Steamship lines and the advisory committee of the claims division of the Western Passenger Association and other interested lines, held on February 25th, 1909, and ask you whether that is a copy of those proceedings? A. That is a record made by the railroad in the customary form.

Q. Can you answer my question? A. It is a copy by the railroad sent to me and I supplied it to your office.

Q. Can you answer the question, whether that is a copy of the proceedings mentioned? A. Yes.

Mr. Dorr: I offer it in evidence.

Marked Petitioner's Exhibit 48.

Q. Do you recall whether or not the provisions of these various agreements to which your attention has been called and which have been marked in evidence were actually executed?

1086

Mr. Beers: It is understood that my objection applies to all this testimony?

Mr. Dorr: Yes.

A. Yes.

Q. Was there from time to time collected by the steamship companies so-called commercial allowances from the railroads on east and westbound steerage traffic of the railroads? A. On vouchers.

Q. Will you explain the method by which claims for those allowances were made and collected? A. It was done by the railroad association individually with

the transporting steamship lines; it was never done through the conference office, the clearing of orders and the settlement of the—

Q. It was not done through your office? A. No.

Q. That is, when the steamship company had arranged for the transportation of third-class passengers they would submit a voucher for that transportation with the railroad companies and receive the allowance?

A. Are you speaking of east or westbound?

Q. I am speaking of both? A. The system might be different.

Q. Explain it if you are familiar with it? A. West-bound it is found necessary to either book all the passengers who are proceeding to interior destinations in the United States because upon their arrival—

1088

Q. Without comment on whether it is necessary or unnecessary, state what is done, if you can? A. Would you like to cross out what I started to say?

Mr. Dorr: I move to strike out that part as unresponsive.

A. On the arrival of the passengers due in the United States from the Canadian port he presents—

Mr. Spooner: You can go on and state it if you want to.

1089

Q. Go on and explain it. Perhaps if I ask questions it will be a little better—

Mr. Burlingham: Let him explain it himself.

Q. Just explain it, what is done by the steamship companies. When the steamship companies sell in this country a ticket for transportation of a steerage passenger who is located in Europe—the so-called prepaid—does it at the same time when the passenger is destined to an interior point make some provision for

1090

that transportation within the United States by the railroad? A. Yes.

Q. In what form does it make that arrangement with the person who purchases a prepaid ticket? A. The same as a ticket sold in Europe, a separate ocean contract and a separate rail order is issued and is handed to the passenger; that rail order which acknowledges the receipt of the fare from the seaboard to the final destination of the passenger is for just the amount of it to the emigrant or whoever else may be using it. Upon arrival at the United States—

1091

Q. If I may interrupt one minute: The amount paid by the passenger or person who purchases the prepaid or inland transportation is the published rate of the railroads from the point of arrival in this country to the point of destination in this country? A. Yes.

Q. And the purchaser on the Continent or in England pays the published rate of the steamship company for the Atlantic transportation, plus the published rate of the railroad company from port of arrival in this country to the point of destination in this country, is that it? A. Right.

1092

Q. Now then, upon the arrival of a passenger—  
A. Whether in the first, second or third class, the possession of that railroad order insures the forwarding to the proper destination by the joint action—

Q. Just a minute, Mr. Sandford; what does the holder of that ticket do in order to get railroad transportation; just describe it in that way? A. It is valid at any railroad ticket office in the world.

Q. When he presents it to a railroad office the railroad gives him a ticket in exchange to his destination? A. Or at Ellis Island in the case of third class passengers to this port.

Q. Do you know whether or not the name of the steamship company which has sold the trans-atlantic transportation is stamped on that order? A. It is an

official document of the steamship with the name of the steamship company printed on it.

Q. Now, as to the eastbound, in what form does the steamship company arrange for or sell through transportation, or inland transportation? A. The issue of an ocean ticket by an agent in the interior of the United States for eastbound transportation, accompanied by a voucher coupon, verified by the railroad, provides for a system equivalent to westbound what might be termed through transportation, so that the passengers come through and they are known on the way as steamship passengers and the business is expedited by these operations.

1094

Q. Describe the machinery of it, without commenting, if you can refrain from it? A. As stated—

Q. If an eastbound steerage passenger goes to a steamship office he gets two papers, one a steamship ticket and the other what is in effect a railroad ticket? A. The passenger is supplied usually directly by some agent with an official railroad ticket to the seaboard, usually in conjunction with a steamship ticket of such a number and date.

Q. Is that railroad ticket which he receives an official railroad ticket of the railroad? A. Yes.

Q. Is there any stamp or other writing put upon that ticket to show that has been purchased in conjunction with the steamship passage? A. I think that it is provided that the passenger must show the ocean ticket whenever called for during the journey.

1095

Q. That is, it is a special form of ticket? A. It is usually separate class and mixed class emigrants rail ticket.

Q. Does it in any way designate the steamship line by which the passenger is ultimately to travel? A. I don't think so. That originates in the interior and they are not so familiar with it.

1096

Q. Now, the rate on eastbound which the railroad passenger pays is the published rate of the railroad from the interior point to the port of departure? A. Yes.

Q. Plus the published rate of the steamship company for the trans-atlantic voyage, is that right? A. Yes.

Q. By published rate of the steamship company I mean merely the rate which the company itself is advertising to carry passengers for on the steamship in question from the port of departure in question to the point of arrival? A. Yes.

1097

Q. In what way do the steamship companies receive the so-called commercial allowance which is paid to them by the railroads on this traffic? A. Westbound traffic?

Q. Take eastbound traffic if you will? A. The steamship company prepares a statement of the voucher coupons issued by their agents in the interior and validated by the railroad agent who issues the railroad ticket, submitting those to the proper group of railroads interested and having already deducted the commercial allowance portion which belongs to the booking agent and various general passenger agents, until it comes to the seaboard office, eventually receives the commercial allowance from the railroad companies to reimburse them for what they have already paid out. Westbound it is a trifle different. The orders of the steamship lines—

1098

Q. Have the steamships paid anything to the railroad companies direct on this eastbound traffic? A. They receive it.

Q. I understood you to say to reimburse them for what they have paid out? A. The steamship company receives with the advice of each eastbound steamship ticket a voucher coupon for the rail ticket that has been issued to the traveller; the steamship agent re-



mits remittances for the steamship sailing minus his ocean commission and also minus his rail commission.

Q. That is, a commission which the steamship company allows him on this commercial allowance which it receives? A. No, the steamship company allows deduction of two commissions, the inland commission and the ocean commission.

Q. The steamship company generally receives the voucher and presents it to the railroad company? A. You mean the steamship booking agent?

Q. The steamship booking agent receives a voucher and ultimately sends that voucher to the steamship company for which he is an agent, does he not? A. No, the steamship booking agent at the interior point completes the voucher coupon at the time of the issue of the ocean ticket, but that voucher coupon is not valid until it has been validated by the railroad agent who sells the railroad transportation in connection with the ocean transportation of the special agent.

1100

Q. Now then, what is physically done with that coupon after it has been validated? A. It is forwarded with the advice of the rail passenger to the steamship company's general passenger agent in the territory affected or direct to the seaboard office less—

Q. What is done then with this voucher; it comes to the general passenger agent of the seaboard, or the general passenger agent of the steamship company in the particular territory to which the passenger was booked? A. It eventually reaches the seaboard as a matter of fact.

1101

Q. After it reaches the seaboard what is done with it physically by the steamship company? A. At frequent intervals each steamship company prepares an abstract to accompany the rail voucher coupons that they have accumulated, forwarding the abstract and the voucher to the proper group of railroads for veri-

1102

*Lawson Sanford*

fication and ultimate reimbursement of the commissions already paid out.

Mr. Dorr: I move to strike out the last part of the answer as not responsive.

Q. What I asked you is this; what is physically done with this voucher by the steamship company; where do they send it to? A. After making the collections of accounts they do not send each voucher separately to the railroad.

1103

Q. After getting a considerable number of vouchers they send those to the proper railroad company? A. To the proper railroad group.

Q. After they are sent to the proper railroad group does that railroad group then send to the steamship company, or remit to the steamship company, the amount of the so-called commercial allowance for those vouchers? A. Yes, after verification.

Q. What happens then, briefly? A. It is very hard for me to tell—

Q. The steamship company on presentation of the vouchers in question receives the commercial allowance for that transportation covered by those vouchers from the group of railroad companies affected? A. Yes.

1104

Mr. Spooner: What is there for the railroad company to pay to the steamship company? Has the steamship company advanced some money for the railroad company?

The Witness: The steamship company has honored the deduction of the steamship booking agent for his proportion of the ocean commercial allowance and in due process of time is reimbursed by the railroad companies if they verify the correctness of the booking. If it is not verified and the voucher is thrown out the agent is told that he is not entitled to his commercial allowance.

Q. The railroad companies on presentation of vouchers showing certain transportations fulfill their agreement to give the steamship companies a certain commercial allowance by paying that percentage or that allowance to the steamship companies, and the steamship companies are under no obligations whatever to the railroads under this agreement as to how they shall distribute that allowance, or whether they shall keep it all or give it all away? A. The basic foundation is to compensate.

Q. Is there any agreement between the railroad company and the steamship companies as to the disposition by the steamship companies of the so-called commercial allowance? A. The only definite understanding between the steamship lines and the railroad companies in respect to all of this business both east and westbound is that—

1106

Q. Are you testifying to something in that paper or something outside of the paper? A. I am testifying because this reminds me of the arrangement.

Q. Is it an arrangement defined in that paper? A. Yes.

Q. Then we will let the paper speak for itself? A. I am answering your question.

Mr. Dorr: Then I withdraw the question.

Mr. Burlingham: I submit, Mr. Examiner, that the witness is entitled to finish his answer and that the interruptions of the District Attorney should not put an end to his answer.

1107

The Examiner: I understand he has no power to take off what is already on the record?

Mr. Dorr: No. I have withdrawn my question, so that no further answer is necessary.

Mr. Burlingham: You can go on with your answer. Read the question and answer.

(Question and answer read.)

1108

*Matthew R. Malinowsky*

A. (Witness continuing the answer)—is that none of the commercial allowance shall be given directly or indirectly to the passengers.

Q. That is precisely what appears in this agreement? A. Well, you asked me—

Q. I asked you if there was anything different that does not appear in this agreement? A. No.

Recess taken until 2:00 o'clock P. M.

1109 Afternoon session.

MATTHEW R. MALINOWSKY, sworn on behalf of the petitioner testified as follows:

*Direct-examination by Mr. Dorr:*

Mr. Dorr: I offer in evidence letter under date of November 16th, 1909, from the Holland-Amerika Line, Rotterdam, to the New York office.

Mr. Beers: Objected to as incompetent and not binding—the same objection I made to the other letters of this line.

1110

Marked Petitioner's Exhibit 49.

Letter of the Holland-Amerika Line to the New York office under date of May 28th, 1907.

Mr. Beers: Objection renewed.

Marked Petitioner's Exhibit 50.

Original letter from the Holland-Amerika Line to the New York office, under date of July 6th, 1906.

Mr. Beers: Objection renewed.

Mr. Spooner: Objected to as relating to a time and situation ante-dating the alleged cause of action upon which the suit is based and being

*Matthew R. Malinowsky*

1111

otherwise irrelevant and immaterial and incompetent.

Mr. Dorr: No objection is made as to the sufficiency of the proof as to the genuineness of the letters in question?

Mr. Spooner: No.

Marked Petitioner's Exhibit 51.

Q. Where do you live, Mr. Malinowsky? A. New Britain, Conn.

Q. Did you reside there in April, 1911? A. Yes, sir.

Q. And May, 1911? A. Yes, sir.

Q. At that time were you an agent of the Uranium Steamship Company? A. Yes.

Q. As such, did you sell certain tickets during those months? A. I did.

Q. On the Uranium Steamship Company? A. Yes, sir.

Q. I show you what purports to be a certain ticket stub book and ask you whether or not that is a ticket book which was used by you and from which you issued tickets? A. Yes, that is.

Q. Can you state whether or not you issued tickets to the persons whose names are recorded under the heading "Name of Passenger," on the various stubs? A. Yes, I can.

Q. Were those tickets paid for? A. They were.

Q. By the persons to whom you issued them? A. Yes.

Mr. Dorr: I offer that ticket stub book in evidence.

Mr. Spooner: What is the purpose of this?

Mr. Dorr: That is to show that the tickets were issued by the Uranium Steamship Company, that they were properly paid for, but the Government proposes to show that when sent

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1114

*Matthew R. Malinowsky*

over as through passengers on the other side, the holders of them were informed by the agents of the defendant lines, or some of them, that the tickets were invalid, and the passengers were deterred from using these tickets and were subsequently sent back to this country. The object is to show unfair competition by the agents of the defendant lines in Europe by misleading the passengers, holders of *bona fide* tickets, that those tickets were worthless in an effort to secure a monopoly of the steerage trade by the defendant lines or some of them. It will not apply to all of the lines, but the evidence will indicate who it does apply to.

1115

Mr. Beecher: I object to this as immaterial and irrelevant and incompetent, and not affecting the issues here, transactions between parties not parties to this action.

Marked Petitioner's Exhibit 52.

Q. I show you a second, what purports to be a stub ticket book of the Uranium Line, and ask if that also was kept by you and tickets therefrom issued by you relating to that line? A. Yes.

1116

Mr. Dorr: I offer that in evidence.

Mr. Spooner: I make the same objection.

Mr. Beecher: I join in that objection.

Q. Were these records made by you? A. They were—by my clerk; the writing is not mine.

Q. It was kept under your supervision? A. Yes.

Mr. Dorr: Do you make an objection that the writing is not in the handwriting of this witness?

Mr. Bradley: We renew the previous objection; we will expressly state we do not make

*Matthew R. Malinowsky*

1117

it on that ground; that it is not in the handwriting of this witness.

Marked Petitioner's Exhibit 53.

Q. After issuing these tickets and receiving the money therefor, did you ever see again the tickets which you had issued and delivered to the purchasers?

A. Yes, I did.

Q. How long after? A. I couldn't state that exactly; I won't be sure how long it was afterwards.

Q. Within a month or so after? A. Oh, I would say it was two months afterward.

Q. Were there any of these tickets which you issued which were not returned to you? A. Only one.

1118

Q. Is that the last stub in Government's Exhibit 52? A. Yes, that is the last stub in Exhibit 52.

Q. That ticket did not come back? A. It did not; the party arrived on that ticket.

Q. When these tickets were presented to you what did you do with them? A. I sent them back to the company.

Q. What did the company do—the Uranium Company? A. The Uranium Company, they refunded the money for them.

Q. Did it refund it to the passengers? A. Yes, to the purchasers.

1119

Mr. Beecher: I take the same objection to all of this line of testimony as immaterial in reference to the contracts between these people.

Q. Did the Uranium line or its agents object that these tickets were not properly issued by you?

Mr. Beecher: I make the same objection.

A. They did not.

Q. Did the Uranium Company or their agents say that there was something the matter with these tickets

1120

*Matthew R. Malinowsky*

or they were not properly issued by you? A. They did not.

Mr. Beecher: I make the same objection as immaterial and incompetent.

Q. Were these tickets that you issued in the regular form? A. Regular form, yes; there is something else I want to explain; I said I refunded the money in each case to the purchaser; it was not in each case that I refunded the money, in some cases I sent tickets to Europe on other lines and then the passengers came here.

1121

Q. Did you issue the ticket on another line? A. Yes, sir.

Q. In exchange for the earlier ticket? A. Yes.

Q. On what other lines did you issue the tickets? A. I issued it on the Holland-Amerika Line.

Q. Did the persons who returned these tickets make any statement to you as to why they were returning them?

Mr. Beecher: Objected to as immaterial, irrelevant and incompetent.

A. They did.

1122

Q. Did they deliver any correspondence to you about it or show you any correspondence? A. Yes, a couple of letters they showed me.

Q. Have you got those letters? A. No, sir, I have not; I did not take them from them.

Q. You did not keep copies of them? A. I did not. No cross-examination.



*Samuel Jacob Beckerman*

1123

SAMUEL JACOB BECKERMAN, sworn on behalf of the petitioner, testified as follows:

*Direct-examination by Mr. Dorr:*

Q. Can you speak English? A. A little bit; I don't talk much.

Q. Where do you live? A. 48 Palisade Avenue, Yonkers.

Q. Do you recall whether or not in the summer of 1910 you purchased a prepaid ticket on the Northwest Transport Line from Rotterdam to New York? A. Yes.

Q. Is this the ticket which you received (showing witness ticket)? A. Yes, sir.

1124

Q. And the receipt which you received? A. Yes.

Mr. Dorr: I offer in evidence ticket and receipt.

Mr. Spooner: Objected to as incompetent, irrelevant and immaterial.

Marked Petitioner's Exhibits 54 and 55.

Q. What did you do with that ticket after you received it? A. I went to the old country and I came back.

Q. Did you pay money for these tickets? A. Yes, sir.

1125

Q. Where did you buy them? A. I bought them in the office in Broadway.

Q. The office of the Northwest Transport Company in New York? A. Yes, sir.

Q. After you bought this ticket on Broadway, what did you do with it? A. I went with the ticket to the office again and showed them the letter that my wife couldn't come on that ticket and he was to give me back my money.

1126

*Samuel Jacob Beckerman*

Mr. Beers: I ask that the answer be stricken out, and object to the question as irrelevant and immaterial and incompetent.

Q. Just one minute. After you bought this ticket did you send it to any one? A. I sent to my wife to return to Russia.

Q. Where was she? A. She was in Russia.

Q. You sent the ticket to her over there? A. Yes.

Q. She was coming over to this country? A. Yes.

Q. After that did you receive a letter from your wife? A. I received a letter what happened to my wife and —

1127 Q. Is this the letter which you received? A. Yes, this is the letter I received.

Q. A in this envelope (handing envelope to witness)? A. Yes; this my wife was writing and this is the agents writing (indicating).

Mr. Dorr: The first part of the letter is in the hand writing of the wife and the other is the handwriting of a third person. I consent that the handwriting of the agent be stricken out. I will ask that these be marked for identification, the envelope and letter.

1128

Marked Petitioner's Exhibit 56, for identification.

Q. Was there anything enclosed in this envelope with this letter? A. The ticket.

Q. The ticket which you have already identified? A. Yes.

Q. What did you do with the ticket after you received it back from your wife? A. I went to the office and I gave the ticket back I showed him the letter my wife couldn't come on this ticket.

Mr. Beecher: You don't want what he told the agent, do you? None of this testimony is material or competent; it is all hearsay.

*Deborah Beckerman*

1129

Q. Did you show the agent the letter? A. I showed Mr. Forman the letter.

Q. What did he do after you showed him the letter? A. He read the letter and then gave me the money back.

Q. What did you do after that, Mr. Beckerman, about getting your wife over here? A. I had to buy a ticket on the Holland-Amerika Line.

Mr. Beecher: Objected to as immaterial, irrelevant and incompetent, and ask that the witnesses, statement that he had to buy a ticket, etc., be stricken out.

1130

Q. What did you do about procuring a passage to this country for your wife after that?

Mr. Beecher: Objected to as immaterial, irrelevant and incompetent.

A. I had to buy a ticket on the Holland-Amerika Line.

Q. You read the letter and after reading the letter you bought the ticket on the Holland-Amerika Line?

A. Yes.

Q. Did you send that ticket abroad? A. No, I sent the ticket to Europe again.

Q. And then your wife arrived on the Holland-Amerika Line? A. Yes.

1131

No cross-examination.

DEBORAH BECKERMAN, sworn on behalf of the petitioner, testified as follows:

*Direct-examination by Mr. Dorr:*

Q. In the summer of 1910, were you in Russia, Mrs. Beckerman? A. Yes.

1132

*Deborah Beckerman*

Q. While you were in Russia and before you returned to this country, did you receive this ticket, Government Exhibit 54? A. Yes, the only way I know I recognize my husband's signature.

Q. After you received this ticket what did you do?

Mr. Beecher: Objected to as incompetent, immaterial and irrelevant.

1133

A. A party by the name of Woznianski took the ticket off me, and he asked me to see the ticket, and I showed it to him, and he said he would return it to me, and he kept me waiting there until six o'clock in the evening, and he didn't come and give it to me back and then he wanted me to sign some papers, and I signed some papers for him, and he wouldn't let me go away, and I had my children with me, so I couldn't wait any longer.

Q. Where were you when you received this ticket, what place in Russia? A. In the City of Schransk, in the State of Protz.

Q. Did you leave that city on a journey to Rotterdam in order to use this ticket on the Northwest Transport Line? A. No, they stopped me in a town by the name of Illowo.

1134

Q. Is that on the German frontier? A. Yes.

Q. When you got to Illowo did you have any conversation with Mr. Woznianski? A. Yes.

Q. What conversation did you have with Mr. Woznianski? A. He wanted me to show him my ticket, show him where I am going to.

Q. What conversation did you have; what did you say and what did he say?

Mr. Beecher: Objection renewed.

A. I told him I didn't have to show him my ticket as I was going to Soldau, the next city from Illowo.

Q. Did you expect to meet any one at Soldau? A.

*Deborah Beckerman*

1135

A cousin of my husband I expected to meet there; he was waiting there for me. I told Mr. Woznianski I didn't have to show him any ticket as I am going to meet my cousin at the next station and we both expect to go to America.

Q. What occurred after that? A. Well, he says, No, you have got to buy a ticket off of me, and he kept me in there and wouldn't let me out.

Q. Go ahead and tell your story? A. He kept me waiting there the whole day until a way in the evening, and I had my two little children with me, there was nothing to eat in the room, not even a drink of water, and he asked me to sign a paper that the ticket that I had must be sent back and I must buy a ticket off of him, and I didn't want to stay any longer keeping the children with me without a drink of water or without any eatables, so I signed the paper.

1136

Q. Did you write a letter to your husband while at this station? A. Yes.

Q. Is this the letter (showing witness Government Exhibit 56, for identification)? A. Yes (indicating top part of letter).

Q. What language is that written in? A. Yiddish.

Q. When you sent this letter did it have the writing in the lower part of it? A. Yes, the secretary of Woznianski wrote it in my presence.

1137

Q. And after that did you mail the letter, or did you give it to some one there to mail? A. They only asked me for a stamp and they mailed the letter.

Q. Is that the envelope (showing witness envelope)? A. I am not positive, but I think it is. I can't remember all of that. I think because was Woznianski wrote that.

Mr. Dorr: I will offer the letter and envelope in evidence and I will offer a translation of it. She identified the upper part as written by her-

1138

self and the lower part as written by Mr. Woznianski in her presence.

Mr. Bullowa: The Russian East Asiatic Steamship Company objects to the receipt of the letter on the ground that it is not binding upon these defendants and on the further ground that it is immaterial and incompetent.

Mr. Beers: Objected to on behalf of the Cunard Company as not within the issues presented in the pleading, and incompetent, irrelevant and immaterial and not connected with or binding upon the defendants in any way.

1139

Mr. Spooner: Representing my clients I object to the admission of this paper as incompetent, irrelevant, not being within the issues, and upon the same ground I move to strike out the testimony which has been received upon the subject.

Q. After you signed that letter what did you do, Mrs. Beckerman? A. Then he told me I can go home.

Q. Where did you go? A. I went back to my home.

Q. Did you ultimately come to this country? A. Yes, when my husband sent me a ticket.

1140

Q. By what line did you come? A. By the New Amsterdam.

Q. The steamship New Amsterdam? A. Yes.

Mr. Dorr: Can you state whether or not this translation is correct (addressing the interpreter)?

The Interpreter: Yes, the first part is all right.

*Jacob Shapiro*

1141

*CROSS-EXAMINATION by Mr. Beecher:*

Q. Where did you first meet Mr. Woznianski? A. In his office.

Q. How did you happen to go to his office? A. I didn't go there; I got off the train and a gendarm came up to me and told me to go to Woznianski.

Q. You had never seen him before? A. That is the first time I saw him.

Q. How did you know his name was Woznianski? A. When he came in he came up to me and spoke to me; then when he left me I asked who that man was and they told me that was Mr. Woznianski.

1142

Mr. Spooner: I renew my motion to strike out the testimony of the witness on the same ground as heretofore stated.

JACOB SHAPIRO, sworn on behalf of the petitioner, testified as follows:

*Direct-examination by Mr. Dorr:*

Q. What is your occupation? A. Interpreter and translator.

Q. Are you acquainted with the Yiddish language? A. I am.

1143

Q. I ask you to translate Government Exhibit 56. A. (Reading.) "M. Woznianski, representative of the Norddeutscher Lloyd and Hamburg-Amerika Line, Bremen and Hamburg. Illowo," a City in Germany, then it says: "My dear husband. I am to an accident happened to fall in and I am compelled that I am to return this ticket. Please be quick and send me a second steamship ticket on the Rotterdam line. Then my baggage is waiting down there for me. Send it

*Emanuel M. Beckerman*

1144

as quick as possible so that I should be able to go with the next steamer. Your wife what writes this letter with tears. Deborah Beckerman."

Q. Translate the rest of it? A. Then it is written in English "Samuel Beckerman: The steamship ticket which your wife has is not correct and she cannot go on this ticket. You should seek to buy a new one for her, another steamship ticket from the Holland-America Line, Rotterdam, while the baggage is sent in Rotterdam—"

1145

Q. Does it say while or because? A. Because would be proper. Because the baggage is sent to Rotterdam and is sent to her there. This steamship ticket we are returning to you.

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EMANUEL M. BECKERMAN, sworn on behalf of the petitioner, testified as follows:

*Direct-examination by Mr. Dorr:*

Q. What is your business? A. Interpreter, Municipal Court, City of New York.

Q. Were you formerly in the employ of the United States? A. I was.

1146 Q. Where? A. Department of Commerce and Labor, stationed at Ellis Island, from July 4th, 1908, until December 31, 1910, when I resigned; I was interpreter.

Q. In the summer of 1910 were you in Europe? A. I was in the fall.

Q. On official business? A. My own business. In 1907 I was there on Government business.

Q. Did you visit Illowo on either or both of those trips? A. Yes, on both occasions.

Q. Did you ever meet Mr. Woznianski? A. I did.

Q. Where? A. At Illowo. It is a hamlet about two miles from Russia; it is in Prussia, Germany.



*Emanuel M. Beckerman*

1147

Q. Were you at Soldau in the fall of 1910? A. Yes, on both occasions.

Q. Is this witness who testified before a relative of yours? A. Yes.

Q. Did you have any arrangement to meet her in Soldau and come to this country? A. Yes, sir.

Q. Did she meet you there? A. She did not meet me when it was understood that she was to meet me; I waited there two days for her and she did not show up as she had promised and as it was arranged.

Q. Did you subsequently meet her and come to this country? A. About three months later.

1148

Q. What line did you come on? A. I met her at Hoboken at the pier of the Holland-America Line Steamship Company.

Q. On her arrival here? A. On her arrival here, yes.

Q. When you were in Illowo did you have any conversation with Woznianski as to his business and occupation? A. I did.

Q. Did you have any conversation with Woznianski as to whether or not he was the agent of any steamship lines?

Mr. Beecher: I object to all this as hearsay and incompetent, irrelevant and immaterial.

1149

A. Yes, sir.

Q. Where did you see him in Illowo; where was he? A. I met Mr. Woznianski, I believe, the given name is Max Woznianski at the railroad station at Illowo; from there he invited me to his house, which is adjoining, an institution called Castle Kontroll-station; he told me he was the keeper of that station and as such he is—

Mr. Beecher: We don't want what he told you.

The Witness: He showed me—

1150

*Emanuel M. Beckerman*

Q. What did he show you? A. He showed me the room in which a number of emigrants were awaiting remittances from their friends; as it were it seemed every one was short in funds, although they had their transportation tickets, and he told me he is keeping those emigrants until they received funds. In the adjoining room, which is the office of that station, there are large and very conspicuous signs stating that this is the agency of the North German Lloyd Steamship Company and of the Hamburg-Amerika Steamship Company.

1151

Q. Are you referring now to the first time you were over there or the second time? A. On both occasions, the first and second time.

Q. There were no change in the signs? A. No change in the surroundings or arrangements.

Q. Did you ever meet any one there—

Mr. Beecher: Move to strike out the answer of this witness just given as immaterial, irrelevant and incompetent and hearsay.

Mr. Dorr: I will consider so much of it as relates to conversations—oh, I think we will leave it to the Court to determine whether or not that is admissible.

1152

The Witness: I can state those signs are about six by eight feet.

Q. While you were there did you ascertain whether or not Mr. Woznianski had any person assisting him? A. Yes, sir.

Q. With the title of secretary or otherwise? A. Yes.

Q. What was his name, do you recall? A. David Alter.

Mr. Spooner: I move to strike out the testimony of the witness on the ground that it is

*Leon Konciewiz*

1153

not relevant to the issues made by the pleadings  
and incompetent in itself.

No cross-examination.

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LEON KONCIEWIZ, sworn on behalf of the petitioner, testified as follows:

*Direct-examination by Mr. Dorr:*

Q. Where do you live? A. New Britain, Conn.

Q. Mr. Konciewiz, on May 6th, 1911, did you buy a ticket over the Uranium Line from one Malinowsky, for John Konciewiz? A. Yes. 1154

Q. Do you understand English? A. Not all; I didn't understand it all.

Q. What did you do with those tickets? A. I sent them home for them to come here.

Q. Did you later receive those tickets? A. I did.

Q. Who sent them to you? A. The agent sent them to me.

Q. What agent? A. In Russia, I don't know him.

Mr. Spooner: What part of Russia?

The Witness: Prostken.

Q. Did you afterwards buy a new ticket for these people? A. Yes. 1155

Q. On what line did you buy these new tickets? A. The Holland-Amerika.

Q. On what line were the old tickets? A. I don't know.

No cross-examination.

Mr. Spooner: I move to strike out the testimony of the witness on the same ground as set forth in connection with the last testimony.

1156

*John Konciewiz*

JOHN KONCIEWIZ, sworn on behalf of the petitioner, testified as follows:

*Direct-examination by Mr. Guiler:*

Q. Do you speak English? A. No.

Q. Did you receive a check from Leon Konciewiz over the Uranium Line—did you receive a ticket to the United States? A. I did.

Q. On what line was that, the first ticket? A. I don't know the name.

1157 Q. What happened to the first ticket? A. When I came to Prostken a party there in the office told me that the ticket is no good and he sent it back.

Q. Did you get another ticket? A. Yes.

Q. Do you know on what line that was? A. I do not.

Q. On what steamer did you come over? A. I don't know.

*CROSS-EXAMINATION by Mr. Spooner:*

Q. What port in Europe did the person having this ticket send it to from this country? A. In my own town.

Mr. Guiler: Where did you sail from?

1158 The Witness: I forget the name of the place where I sailed from.

Q. Who sent the ticket to you? A. My brother.

Q. Where does he live? A. In America.

Q. Whereabouts in America? A. New Britain, Conn.

Q. What is his name? A. Leon Konciewiz.

Q. Is that the last witness? A. Yes, sir.

Q. Do you know by what line the ticket was issued? A. I don't know.

Q. Do you know who the ticket was bought for, was it bought for you? A. There was one ticket for two, my sister and myself.

*Veronica Konciewiz*

1159

Q. Who were to use the tickets? A. My sister and myself.

Q. Did you use the last tickets? A. Yes.

Q. Where did you sail from to come to the United States on those tickets? A. I forget the name.

Q. What ship did you come over on? A. I don't remember.

Mr. Spooner: I move to strike out the testimony of this witness upon the same grounds.

1160

VERONICA KONCIEWIZ, sworn on behalf of the petitioner testified as follows:

*Direct-examination by Mr. Guiler:*

Q. Where do you live? A. 22 Silver Street.

Q. Where? A. New Britain, Conn.

Q. Where did you live before that? A. In Broad Street.

Q. I mean in Europe, in Russia? A. Wisaky Mast Gubernia Suffolk.

Q. Did you receive a ticket from Leon Konciewiz to come over to this country? A. Yes.

Q. What happened to that ticket? A. When we came to Prostken they wouldn't let us go on the boat.

Q. What did you do with the ticket? A. Sent it back to the brother.

Q. Who sent it back? A. I did it.

Q. Did you get another ticket later on? A. Yes, sir.

Q. Over what line? A. Rotterdam, but I don't know the name.

Q. Do you know the name of the ship you came over on? A. I do not.

Q. When did you arrive in the United States? A. About a year ago.

1161

1162

*Helena Wladarsky*

Q. When did you stop at Prostken? A. About April.

Q. April what? A. Last year.

Mr. Spooner: I move to strike out the testimony of this witness on the same grounds.

HELENA WLADARSKY, sworn on behalf of the petitioner, testified as follows:

*Direct-examination by Mr. Guiler:*

1163

Q. Where do you live? A. Elm Street, Trenton.

Q. Did you buy the ticket which I show you here?

A. Yes.

Q. Over the Uranium Line? A. Rotterdam.

Q. You bought for your sister, was it? A. Yes, sir.

Q. Did you send it over to your sister? A. Yes, sir.

Q. Did you subsequently receive the ticket back from your sister? A. Yes, sir.

Q. With a letter? A. Yes.

Q. Have you got the letter? A. I have not; I only had a telegram that she sent to me when she came.

1164

Q. Is this the telegram which you received (showing witness paper)? A. Yes, sir.

Mr. Guiler: I offer in evidence the ticket and the telegram.

Mr. Beers: Objected to as incompetent and irrelevant.

Marked Petitioner's Exhibit 57.

Q. I show you Exhibit 57 marked for identification and ask you whether this writing in red and the stamp were on that ticket when you sent it over? A. No, it was not.

*Anton Yonuska*

1165

Q. Was it on when it came back to you? A. Yes.

Q. Was this mark on it when you received it or when it came back? A. The mark in red and stamp only when it came back it had that on.

Q. Did your sister come over to this country? A. No.

*CROSS-EXAMINATION by Mr. Spooner:*

Q. By what line did you buy the ticket you sent over in the first place? A. In Rotterdam; I don't know the name of the line.

1166

Mr. Spooner: I move to strike out the testimony of this witness on the same grounds.

ANTON YONUSKA, sworn on behalf of the petitioner, testified as follows:

*Direct-examination by Mr. Guiler:*

Q. Did you buy a ticket for Agata Gutanchute?

A. I bought a ticket from Malinowsky.

Q. Where was Agata Gutanchute at that time?

A. In the old country.

Q. What part of the old country? A. Wispy Suffolk.

1167

Q. In Russia? A. Yes.

Q. Did you send that ticket over to Agata? A. Yes.

Q. Was that ticket subsequently returned to you? A. Yes, with a letter.

Q. What did you do with the ticket? A. I went to Malinowsky and gave it to him.

Q. Did you get your money back? A. Yes, but not all of it.

*Agata Gutanchute*

1168

Q. Did you get another ticket? A. I did not receive another ticket.

Q. Did you subsequently buy another ticket and send it to her? A. Malinowsky said he would send it, but I had to pay him to boot, but I don't know how that happened.

Q. You had to pay him an additional amount, is that what you mean? A. Yes.

Q. Over what line did you buy the next ticket? A. I didn't have to buy another ticket but I had to pay some more money to get a ticket.

1169 Q. How much more money did you pay? A. \$13 more.

Q. On what line was that ticket, that last ticket? A. On the same line. If it is the same I don't know, I wasn't there.

Q. You bought the ticket from the same man? A. Yes.

Q. But you don't know over what line that was? A. I don't know whether it was the same or another one, but I know I had to pay more money.

1170 AGATA GUTANCHUTE, sworn on behalf of the petitioner, testified as follows:

*Direct-examination by Mr. Guiler:*

Q. Where did you live before you came to the United States?

The Interpreter: She is a Lithuanian, and I do not speak Lithuanian.

The witness Malinowsky, upon consent of counsel acted as interpreter.

Q. Where did you live, in Russia? A. Yes.

Q. Did you receive a ticket from Anton Yanouski to come to the United States? A. Yes.



*Agata Gutanchute*

1171

Q. What happened to that ticket? A. When I got to the frontier station at Eydtkuhnen they told me I had to go back.

Q. What did they do with the ticket? A. When the other passengers there were buying tickets I showed my ticket and the man put a pencil mark over it and said it wasn't any good.

Q. Where were you at that time? A. At Eydtkuhnen at the agent's office.

Q. Did you subsequently receive another ticket from Anton Yanouski? A. No, I did not.

Q. How did you come over here? A. I came here with my own money.

1172

Q. Over what line did you come?

Mr. Spooner: Objected to as irrelevant and immaterial.

A. On the Hamburg Line.

Q. Did you buy a ticket at that station there?

A. I did.

Q. From the agent who was there?

Mr. Spooner: Same objection and further that the question calls for a conclusion.

A. Yes.

Q. What did you do with the old ticket? A. I sent it back.

1173

Q. Back to Anton? A. Back to Anton. I was told the other ticket which I had received in the first place was not any good and that I could not travel on it.

*CROSS-EXAMINATION by Mr. Beecher:*

Q. You don't know who it was told you that? A. The agent in charge.

Q. You don't know who the agent was? A. I don't know who he was.

1174

*Frank Yuska*

Q. You don't know anything about him? A. No, sir; I do not.

By Mr. Guiler:

Q. Was it the man who sold the Hamburg-Amerika ticket to you? A. I wouldn't say positively whether it was the same man or not.

Mr. Spooner: I make the same motion and upon the same grounds to strike out the testimony of this witness.

1175

FRANK YUSKA, sworn on behalf of the petitioner, testified as follows:

*Direct-examination by Mr. Guiler:*

Through an interpreter.

Q. Where do you live? A. New Britain, Conn.

Q. Did you buy a ticket for Mariona Yuska? A. Yes.

Q. Where did you buy that ticket? A. I bought it from Malinowsky.

1176 Q. On what line? A. On the Rotterdam Line, direct from Rotterdam to New Britain.

Q. Where was Mariona at that time? A. In Russia.

Q. Did you send that ticket to Mariona? A. Yes.

Q. Did you get the ticket back later on? A. She returned it to me later on.

Q. What did you do with the ticket then? A. I went back to the agent (meaning the interpreter Malinowsky) and I sent another ticket and the other ticket was sent by cable and I had to add some money in addition to send it by cable.

## Mariona Yuska

1177

Q. How much money? A. \$11.75 I paid in all.

Q. On what line was the second ticket? A. I couldn't say; it was also on the Rotterdam Line, but I couldn't tell you, I don't know, I am not familiar with the names of lines.

Q. Can you tell the name of the boat? A. No, sir; of course, it was not me to travel, it was my wife and I don't know the name of the boat.

MARIONA YUSKA, sworn on behalf of the petitioner, testified as follows, through an interpreter:

1178

*Direct-examination by Mr. Guiler:*

Q. Did you live in Russia before you came to this country? A. I did.

Q. Did you receive a ticket from Frank Yuska to bring you to this country? A. Yes, sir.

Q. What happened to that ticket? A. First I received from my husband here in this country a yellow slip of paper and he said in his letter that from Tilsit I would receive other papers which I finally did receive, and when I showed these papers which were received by me from Tilsit to an agent in Russia he told me they were no good and I could not travel on that ticket.

1179

Q. Well, where was that; at what place? A. In this little place called Trieskus in Russia.

Q. Did you go to a place called Bjoren? A. No, sir; I did not.

Q. What did you do after that? A. Then I remained in Germany waiting for another ticket.

Q. Did you finally get another ticket? A. Yes, I did.

Q. Over what line?

1180

*Francisco Kwesclis*

Mr. Spooner: Objected to as irrelevant and incompetent.

A. I got a ticket which took me through Germany from Tilsit to Rotterdam and from Rotterdam I came to New York here and from New York to New Britain.

Q. Over what steamship line? A. I don't know what the steamship line is called.

Q. What was the name of the ship? A. I don't know.

1181 Q. When did you arrive in this country? A. I arrived here on the 5th of July last year.

Q. Where is that place where you stayed? A. The place is called Katecce, in German, the place where I waited.

Q. Is that the place where they told you the ticket was no good? A. It is at Tilsit I was told that the ticket was no good.

Q. Were there many other passengers there at Tilsit? A. There was a lot of passengers.

Mr. Spooner: I make the same motion to strike out and on the same ground as heretofore stated with reference to the other witness.

1182

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FRANCISCO KWESCLIS, sworn on behalf of the petitioner, testified as follows through an interpreter:

*Direct-examination by Mr. Guiler:*

Q. Did you buy a ticket for Kazimero Kwesclis? A. Yes.

Q. Did you come here from Russia to the United States? A. Yes.

Q. Did you send a ticket to her? A. I did.

Q. Was it finally returned to you? A. Yes.

Q. What did you do with the ticket? A. The ticket did not come back.

Q. From whom did you buy the ticket? A. Malinowsky.

Q. How long have you been in this country? A. Three going on four years.

Q. Did you ever receive that ticket again? A. Yes, I got the first one.

Q. Who gave it to you? A. My brother sent it back to me.

Q. What did you do with it then? A. I went to Malinowsky and asked him what to do with it.

Q. What did he do? A. Malinowsky said I don't see why other people come here and that your brother can't come here.

Q. What happened to the ticket; did you get your money back? A. He told me to buy another one and I paid five dollars additional.

Q. On what line was the other ticket?

Mr. Spooner: Objected to on the same ground.

A. Holland-Amerika Line.

Q. Is that the receipt for the ticket (showing witness paper)? A. Yes, sir.

Q. For the second ticket? A. Yes, sir.

Q. Did you see Malinowsky sign his name to that receipt? A. I did.

Mr. Guiler: I offer that receipt in evidence.

Mr. Spooner: I object to its admission upon the ground that it is irrelevant, incompetent and immaterial.

Marked Petitioner's Exhibit 58.

Q. Did Kazimero come over to this country on that ticket? A. Yes, sir.

395

*Kazimero Kwesclis*

1186

*CROSS-EXAMINATION by Mr. Spooner:*

Q. Is that the same line the other ticket was on?  
A. No, not the same.

Q. What line was the one on that you brought in the first place? A. I don't remember now.

Q. How can you tell then whether it was the same one? A. I know when I sent the first one the writing was not the same as that.

Mr. Spooner: I make the same motion to strike out the testimony of this witness on the grounds as heretofore stated.

1187

KAZIMERO KWESCLIS, sworn on behalf of the petitioner, testified as follows, through an interpreter:

*Direct-examination by Mr. Guiler:*

Q. Where do you live? A. New Britain, Conn.

Q. Where did you live before you came to the United States? A. In Russia.

Q. Did you receive a ticket from Frank Kwesclis to bring you over to this country? A. I did, yes.

1188 Q. Where did you go with that ticket? A. I came to Tilsit.

Q. What happened to the ticket there? A. The agent took the ticket from me and about three hours later my name was called out and I went to the agent and he told me the ticket that he had taken from me was not any good.

Q. What did you then do? A. Then I sent this ticket back to them that same day.

Q. Back to whom? A. Frank Kwesclis, the man that sent it to me.

Q. You sent it back to him? A. Yes.

*Peter Paplawski*

1189

Q. Were there many other passengers there at the same time? A. There was a lot of passengers there.

Q. All in one large building? A. Yes, we were all in one building.

Q. How did you finally come to the United States? A. I afterwards received another ticket and on that ticket I came to this country.

Q. Over what line was that ticket? A. On the Rotterdam Line.

Q. Do you know the name of the ship on which you came over? A. That I could not tell you.

*CROSS-EXAMINATION by Mr. Spooner:*

1190

Q. What is the name of the man who sent you that ticket? A. Frank Kwesclis.

Q. Where is he now? A. He is over there (pointing to back of room).

Q. Do you know where he bought the ticket that he sent over to you? A. He bought it from Malinowsky.

Mr. Spooner: I make the same motion to strike out the testimony of this witness upon the grounds already stated.

1191

PETER PAPLAWSKI, sworn on behalf of the petitioner, testified as follows, through an interpreter:

*Direct-examination by Mr. Guiler:*

Q. Did you buy a ticket for your wife—what is her name? A. Pablina.

Q. To come from Russia to the United States? A. Yes.

Q. Who did you buy the ticket from? A. Mike Malinowsky.

*Pablina Paplawski*

1192

Q. Over what line was that ticket bought, what steamship line? A. Rotterdam.

Q. How long ago was that ticket bought? A. Some year sometime.

Q. Did you send that ticket over to your wife? A. I did.

Q. Did you receive that ticket again from her? A. I did.

Q. What did you do with the ticket? A. I went to Mike Malinowsky and paid the difference of \$10 and got other tickets.

1193 Q. Over what line were the other tickets?

Mr. Spooner: Objected to upon the grounds already stated.

A. The Rotterdam Line.

Q. Do you know the name of the boat on which you came over? A. I do not.

Q. Was it the same kind of a ticket—the second ticket—as the first?

Mr. Spooner: Same objection.

A. No, sir; it was a different company.

Q. Did you buy it from the same man? A. Yes, Mike Malinowsky.

1194

Mr. Spooner: I move to strike out the testimony of this witness upon the grounds heretofore stated.

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PABLINA PAPLAWSKI, sworn on behalf of the petitioner, testified as follows through an interpreter:

*Direct-examination by Mr. Guiler:*

Q. When did you come to this country from Russia, how long ago? A. Ten months ago.



Q. Where did you live before you came to this country? A. In Europe.

Q. In what part of Europe, Russia? A. Russia; I lived in a little village, it did not have any name.

Q. Did you receive a ticket from Peter Paplawski to come over to this country? A. Yes, I did.

Q. To what place did you go with the tickets? A. Came to America.

Q. Where did you go after you left this town that had no name? A. Do you mean the first time?

Q. Yes. A. I don't remember the name of the city.

Q. What was done with the ticket? A. I sent back the first ticket.

1196

Q. Who sent it back? A. The person who was to come to America with me he helped me out.

Q. And sent the ticket back? A. Yes, sent it back to my husband.

Q. Why did you send it back?

Mr. Spooner: I object to that as immaterial and irrelevant.

A. They wouldn't let me ride on that ticket.

Q. Why did you send the ticket back? A. They wouldn't let me ride on the ticket.

Q. Where was you told that the ticket was no good? A. I don't know where it was, because I wasn't there myself with the ticket, only the party that was with me took the ticket and went and came back and said that the ticket was no good.

1197

Q. What was his name? A. Simon Kowicz.

Q. Where is he now? A. He is here in the United States somewhere, in Pennsylvania, but I don't know where.

Q. Did he have a ticket of the same kind you had? A. Yes.

1198

*Pablina Paplawski*

Q. Was the place you stopped off at Szena? A. In Prostken.

Q. That is where the ticket was sent back from? A. I did not go to Prostken at all, only that other party that was to come with me, he took the ticket and went to Prostken and then he came back and said the tickets were no good.

Mr. Beecher: I move to strike it out—the story told by this other party.

1199 Q. Then did Simon come over with you to the United States? A. Yes.

Q. On what ship did you come over? A. I don't know.

Q. When was that that you came over? A. Ten months ago.

Q. Did you get another ticket to come over on? A. Yes.

Q. Was it the same kind of a ticket as the other one that you had? A. I don't remember.

*CROSS-EXAMINATION by Mr. Spooner:*

1200 Q. It was your husband who sent you the ticket, was it not? A. Yes, my husband.

Q. He was here in America? A. Yes, sir.

Q. Where was he living in America? A. New Britain.

Q. Do you live there still? A. Yes, sir.

Mr. Spooner: I make the same motion to strike out the testimony of this witness on the ground as heretofore stated.

Hearing adjourned to Thursday, June 20th, 1912,  
at 10:00 o'clock A. M.

UNITED STATES DISTRICT COURT,  
SOUTHERN DISTRICT OF NEW YORK.

1201

<p>THE UNITED STATES OF AMERICA, Petitioner, against HAMBURG-AMERIKANISCHE PACK- ETFAHRT - ACTIEN - GESELL- SCHAFT, and others, Defendants.</p>	}	<p>Before Charles Elliott Pickett, Esq., Examiner.</p>
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New York, June 20th, 1912.

1202

Hearing resumed pursuant to adjournment.

Appearances:

Henry A. Wise, Esq., Goldthwaite H. Dorr, Esq.,  
Henry A. Guiler, Esq., John S. Bradley, Esq.; for the  
Petitioner.

Messrs. Burlingham, Montgomery & Beecher, by  
Charles C. Burlingham, Esq., and Norman B. Beecher,  
Esq.; for the Anchor Line, Ltd., *et al.*

Messrs. Choate & Larocque, by Nelson Shipman,  
Esq.; for Norddeutscher Lloyd, *et al.*

Messrs. Spooner & Cotton, by J. C. Spooner, Esq.;  
for The Allan Line, *et al.*

1203

Messrs. Lord, Day & Lord, by Lucius H. Beers,  
Esq., and Allan B. A. Bradley, Esq., for The Cunard  
Line, *et al.*

Ralph J. M. Bullova, Esq., personally and Walter  
Rogers Deuel, Esq.; for Russian East Asiatic Com-  
pany, *et al.*

1204

*Lawson Sandford*

LAWSON SANDFORD, recalled:

*Direct-examination continued by Mr. Dorr:*

1205

Q. Mr. Sandford, I haven't your testimony of yesterday written out yet, so I may have to go over some of the same ground. As I recall it I was asking you about the eastbound traffic and the arrangement by which the commercial allowance was paid to the Steamship Lines by the railroads, and the actual way in which that allowance reached the Steamship Companies. As I recall your testimony it was—and correct me if I am wrong—that in regard to the eastbound business the agent who sold the steamship ticket also sold a railroad ticket to the intending eastbound passenger, and that that ticket was validated by the railroad company, that the passenger paid to the agent who sold these tickets the full published rate of the railroad lines from the inland point to the port of departure, and also the regularly advertised rate of the steamship company from the Atlantic port of departure to the port in Europe or Great Britain; do you follow that? A. Yes. I think you have done very well, indeed, Mr. Dorr, to grasp it as much as you have. In essence you are right, but actually the system of the eastbound booking does not end at the European port of destination, because for the same reason which has actuated the carriers in—

1206

Q. Just leave out the reasons and state what is done, if you will—is my statement of your testimony correct so far as it goes, that is, the port of arrival at Europe or the point in Great Britain? A. Not absolutely so.

Q. In what respect is it incorrect? A. The passenger, many times a third-class passenger, is either booked from the point of origin in America to his final destination wherever it may be across the sea—

Q. If I may interrupt you, in that event does he pay to the agent at the inland point in this country not only the published rate of the railroad from the inland point to the port of departure and the advertised rate of the steamship from the Atlantic port to the port of arrival on the other side, but also a sum covering inland transportation on the other side?

Mr. Beers: In order to save time I will simply note in the record the objection which I took when Mr. Sandford was last being questioned about these matters. I object to all evidence relating to railroad or passenger associations or commercial allowances as immaterial and irrelevant and not within the issues.

1208

A. Yes. It is necessary to—

Q. Was there anything else that I left out in my description of your testimony? A. I don't think you have fully grasped the method of the booking—

Q. State that again as briefly as you can? A. Because it is not invariably that the steamship agent in the interior for an eastbound booking receives the American inland fare.

Q. That is what I want to get at? A. He may himself, or with the passenger, go to the railway station where the railroad ticket is purchased; sometimes agents of steamship lines are also agents of railroad companies; there is no hard and fast definite statement that can be made in respect to the operation in each individual case.

1209

Q. In the territory covered by the Southern Pacific Railroad it is true, is it not, that the steamship agents are very frequently also the railroad agents of the Southern Pacific Railroad? A. Very often are agents of the Atchison, Topeka & Santa Fe.

Q. Or of the particular line? A. Yes.

## Lawson Sandford

1210

Q. And then the territory covered by the other associations, is that also more or less true? A. It depends largely upon the amount of steamship business originating in a particular town or district, whether it is practicable to find men who can be purely railroad agents or purely steamship agents.

Q. That is, the two offices are combined, the same man is the railroad agent and also the steamship agent? A. Frequently a man who is a steamship agent will become a railroad agent or *vice versa*.

1211

Q. The only cases then in which the inland railroad fare is not paid over to the agent who arranges for the eastbound transportation is where a traveller goes to the ticket office of the railroad himself and pays money to the railroad, is that the only case? A. In the majority of cases I should think that the passenger pays the railroad fare to the railroad agent at the point of origin.

Q. Instead of to the steamship agent? A. You see that is business originating in the interior and I am not really sufficiently posted to describe what is an invariable rule; I am not sure there is one.

1212

Q. I am not asking you to testify to an invariable rule; but simply the usual course of business as you have become familiar with it in the years in which you acted in the capacity you have testified to? A. The only difference I take it between the east and westbound through business is that in the westbound the steamship agent, either in Europe or in America, invariably receives all of the money for the transportation, whereas in America for the eastbound business he may not receive it.

Q. Now, on prepaid westbound business, then, and on cash westbound business, that is the westbound business in which the payments are made in Europe, the passenger pays a sum which covers the inland transportation on the continent or in Great Britain, the

advertised steamship rates from the port of departure in Great Britain or the continent and the published railroad rates from New York or other port of arrivals to the inland point of destination? A. That is right.

Q. Is it also true that at these conferences between representatives of the rail lines and the representatives of the ship lines that it was stated by the representatives of the ship lines that they would so control the routing of the eastbound traffic as the representatives of the rail lines should direct?

Mr. Spooner: Isn't that all embodied in some writing or minutes, arrangements made between the railway companies and the steamship lines?

1214

The Witness: Yes, sir.

Mr. Spooner: Objected to as incompetent.

Mr. Dorr: He is certainly competent to testify as to what was said at a conference, even though it is what was stated orally.

Mr. Spooner: It is not shown whether Mr. Sandford was present.

Mr. Dorr: I will develop that further if we find out there was such a conversation.

Mr. Spooner: I think you had better develop that first.

Mr. Dorr: I stand on my question.

1215

Mr. Spooner: I object to the question.

Mr. Beers: I also object, and on the further ground that it is not within the issues in this suit.

Q. Answer the question and also tell what was done; you have already testified to what took place between the representatives of the rail lines and representatives of the ship lines at meetings at which you have already testified you were present, what was said at these conferences by the representatives of the ship lines, that they would control the routing of the east-

*Larson Sandford*

1216

bound traffic as directed by the representatives of the rail lines? A. I think I must have been present at practically all of the meetings between the steamship lines, but the question is an omnibus one; the relations between the steamship lines are not with all the railroads of the United States as a whole; they have to do with different groupings of the railroads.

Q. I will separate my question then; first in regard to the Western Passenger Association and the Southern Pacific? A. The steamship lines said in essence—

1217

Mr. Beers: Objected to as incompetent.

A. (Continuing.) The steamship lines said in essence that they would route the eastbound business and do it in an improved manner over the previous unsatisfactory methods which had existed for many years.

Q. Did they say that they would route it in the way which should be directed by the rail lines? A. They would undertake to do so; but they did not succeed.

Q. They did not succeed? A. No, they made no effort to route passengers by any specific route at the beginning of the relations between the western roads and the steamship lines.

1218

Q. Did they receive instructions from the western roads as to the desires of the western rail lines as to the routing of this eastbound traffic? A. Yes.

Q. Did they endeavor to comply with it? A. It can hardly be said that they did.

Q. They did not endeavor to? A. They did not.

Q. Did they have an arrangement with the western roads by which they were to receive a commercial allowance from this eastbound traffic? A. Yes.

Q. What was the rate of that allowance?

Mr. Spooner: What was the theory of it?

Mr. Dorr: I have not asked that.



Q. What was the rate of that compensation or that allowance? A. It varied geographically.

Q. I am asking you now about the Western Association and the Southern Pacific? A. It varied geographically from the Missouri River gateways to Chicago ten per cent, maximum seventy-five cents, or a value of seventy-five cents.

Q. That covered simply the transportation in the territory of the Western Passenger Association and did not cover any allowance which the ship lines might receive for transportation which occurred in the central passenger territory or the Trunk Line territory? A. That was supplementary.

1220

Q. That was supplemental to their commercial allowance which they might receive? A. Yes, and for business originating further west seventy-five cents was the maximum.

Q. Seventy-five per cent was the maximum? A. I beg pardon, seventy-five cents, without the percentage, from the point of origin to the Missouri River gateways. The basis for business originating in Canada is substantially about the same.

Q. Do you recall when this—

Mr. Spooner: Can't we make some arrangement under which there shall be a stipulation that this evidence was taken under a general objection?

1221

Mr. Dorr: Certainly.

Mr. Spooner: And it should be the privilege of either or all to object to it except as to the form of questions?

Mr. Dorr: Except as to the form of questions. I will have no objection where the witness is within reach so he may be called in the event that the explanation goes to a matter which can be cured by recalling him, but as to witness such as we had yesterday morning I

*Lawson Sandford*

1222

think that we should have the grounds of the objection at the time.

Mr. Wise: Put it this way: That a general objection is now reserved to every question asked of this witness with the privilege to the defendants or any of them to supplement that objection by specification at any time before the case is submitted to the Court, such specification not to be allowed where they would relate to the form of the question and that objection be noted in the proper place in the record when made.

1223

Q. When did this arrangement for the particular rate allowance which you have mentioned—for the territory which you have mentioned—go into effect?

A. In the autumn of 1909.

Q. And how long did it remain in effect? A. It has been running ever since.

Q. It went into effect in the autumn of 1909 and has been in effect ever since? A. Yes.

Mr. Burlingham: Was it reduced to writing?

The Witness: Yes, in a general way; the necessary things were reduced to writing.

1224

Q. Did the conferences of which you were secretary have a copy of that agreement, if there was an agreement reduced to writing? A. Had a full set of all the papers.

Q. And those papers were left with whom? A. With the managing committee.

Q. I show what purports to be minutes or proceedings of the meeting of the Trans-atlantic Passenger conferences with the advisory committee emigrant bureau of the Western Passenger Association, held on November 10th and 11th, 1909, at the rooms of the Trans-atlantic Passenger Conferences, New York, and ask you whether that is a copy of proceedings held on

*Lawson Sandford*

1225

those dates? A. The typing of the—these are undoubtedly the record.

Q. At that time? A. Yes.

Mr. Dorr: I will offer this in evidence subject to any corrections which may subsequently be made in that, if there are any. As far as I know it is a perfectly accurate record.

The Witness: I see it is headed "Tentative Minutes," not official. I don't know that handwriting.

Mr. Dorr: We will not offer that part.

The Witness: That looks like Mr. Burnett's handwriting.

1226

Mr. Dorr: I offer in evidence merely the typewritten part.

Mr. Beers: I object to the admission of this paper on the grounds already stated—it is incompetent, irrelevant and immaterial and not within the issues.

Marked Petitioner's Exhibit No. 59.

Q. I also show you, Mr. Sandford, a typewritten document entitled "Appendix A" and show you with it the addendum and certain other appendices, and ask you what that document is? A. It is the Western Passenger Association form of a department, and it seems to refer to the westbound arrangement; it is the westbound arrangement.

1227

Q. Is that one of the agreements you have referred to or a copy of it? A. That is a copy of the westbound, yes; it is stated to be westbound.

Mr. Dorr: I offer this in evidence.

Mr. Beers: Same objection.

Marked Petitioner's Exhibit No. 60.

Mr. Beers: The same stipulation as to objections to questions as I understand relates to

1228

the objections to the admission of documents tendered for the identification of this witness?

Mr. Dorr: Yes. I wish any objections as to the sufficiency of identification of the documents will be made at this time, the authenticity, or I will consent that any documents which are admitted in evidence shall be admitted subject to correction if it should later appear that there are any errors in them.

Mr. Spooner: The witness testified that this is a form something like it.

1229 The Witness: I think it is a copy of the westbound arrangement.

Mr. Burlingham: That is an agreement containing amendments up to January 26th, 1905.

Q. Before we leave the subject of the eastbound traffic, while this arrangement was in effect did the steamship lines receive the specified commercial allowance from the rail lines? A. Eastbound, westbound?

Q. I am talking merely about the eastbound now? A. I think that all the commissions have been paid.

1230 Q. And the method of payment to the steamship lines was, as I recall your testimony of yesterday, that the ship lines, or their agents, submitted to the rail lines, vouchers or documents in some form which showed the transportation over the rail line of eastbound passengers who had been booked by the agents of the ship line? A. It would be wise to put in evidence the form of voucher coupon which will explain it.

Q. You will have to let counsel attend to the wisdom of putting in any particular documents and any particular matter, if you will? A. The voucher coupons as I explained yesterday—

Q. But you haven't got these, have you? A. No, I have no papers now.

Q. Then we cannot get it from you. I am asking you whether that in substance was the method that was used? A. Yes, on a regular form of voucher coupon showing the character of the steamship transportation issued to the passenger or passengers and below the form of railroad transportation sold to the same people, duly validated by the issuing railroad agent.

Q. Do you recall whether or not a minute was adopted by the American Atlantic Conference here in New York as to what part of this commercial allowance might be allowed or might be paid by the steamship lines to their booking agent and to their general agent; do you recall whether or not that matter was taken up in the conference? A. Yes.

1232

Q. I show you what purports to be minute number 184 of the meeting of the American Atlantic Conference of November 9th, 1909, and ask you whether that is the minute to which you refer? A. That minute relates to the east and westbound rail commercial allowance and—

Q. Is that the minute to which you referred? A. Yes.

Q. Does that refer exclusively to eastbound or also to other westbound traffic? A. It represents east and westbound, but it did not become operative.

1233

Q. That is what I was going to ask you; was this minute put in effect? A. No.

Q. It never was put into effect? A. Well the—

Q. Was it ever acted upon? A. No.

Mr. Dorr: I will offer in evidence minute number 184 dated November 9th, 1909, of the American Atlantic Conference, being one of the minutes which has been heretofore identi-

1234

*Lawson Sandford*

fied by Mr. Sandford as the minutes of the Atlantic Conference.

The Witness: The minutes of that meeting were not confirmed.

Mr. Dorr: I offer it so that a subsequent examination may be intelligible. The whole exhibit is marked Exhibit 25 for identification; I will offer in evidence minute No. 184 appearing in Exhibit No. 25 for identification and ask that it be marked Exhibit No. 61 in evidence and copied into the record by the stenographer.

1235

Mr. Beers: I object to its admission upon the ground that it is irrelevant and not within the issues and incompetent.

Minute marked Petitioner's Exhibit No. 61.

Q. Now, Mr. Sandford, this arrangement you say never actually went into effect for eastbound traffic?

A. That minute was not confirmed; why I cannot now recall.

Q. Confirmed by whom? A. It was the custom to make up a set of proceedings and before they were declared operative those who were interested in them were given an opportunity to say whether or not they cared for that particular record.

1236

Q. It appears in this particular minute, does it not, that it shall be referred at once to Europe with the request that it be made a by-law of any arrangement in Europe, is that what you refer to? A. No, the whole document.

Q. In this particular minute? A. I mean the entire minutes.

Q. It shall at once be referred to Europe with the request that it be made a by-law of any arrangement in Europe, and as the result of correspondence with Europe you found it had not been carried out by ar-

rangement in Europe? A. I did not take it up at all. I submitted the proposition which you see was on a different process from the confirmed proceedings, and confirmed proceedings of that set of minutes never issued so far as I was concerned as secretary. I had, therefore, nothing to transmit in the matter at all to anyone.

Q. You mean it never was transmitted to Europe?

A. As far as I am concerned no. I could take no steps to carry out—

Q. Did your office send this minute over to Europe?

A. The custom of awaiting confirmation proceedings were to send one copy to each of the gentlemen interested and await their action.

1238

Q. The confirmation proceedings that you refer to are the confirmation proceedings of the New York conference? A. Surely.

Q. And not the London or European confirmation?

A. The confirmation which I received was by the representatives present, or if occasionally a representative—

Q. In New York? A. In America, yes.

Q. Was any arrangement made by which the members of the conference regulated the amount of the commercial allowances which they received on east-bound traffic from the Western Passenger Association territory which was to be allowed to the sub-agents or to the booking agents? A. The regulation was under discussion for both east and westbound business from time to time and by March of this year the standardization was arranged for business originating in America, and I think that since at the London Conference the circulars of the lines to their agents have issued.

1239

Q. Well, then, between the adoption of this east-bound commercial allowance agreement between the railroads and the ship lines which you represented or

*Lawson Sandford*

1240

which you were representing in the conferences of which you were secretary, between the adoption of that agreement in 1909 and March of this year— A. Yes.

Q. There was no rule or regulation adopted by the ship lines as to the amount of the commercial allowance, if any, which they should allow to the booking agents? A. In general eastbound—

Q. Can't you answer that? A. I can't say yes or no to it.

Q. Can you say yes and then qualify it or no and then qualify it? A. My explanation will take ten words.

1241

Q. It seems to me that question ought to be answered yes or no? A. If you were to read it again I will try to answer it.

Q. I haven't any objection to the qualifying of it by explanation? A. May I hear it again?

Q. (Question read.) Between the autumn of 1909 when this commercial allowance with the Western Passenger Association went into effect in March of this year? A. No, not to the best of my knowledge, but I believe—

1242

Q. Was there any working understanding? A. I think that practically all of the lines allowed their agents on eastbound business one-half of the amount eventually received from the railroad; some lines may have allowed the balance to the general passenger agent in charge of the territory or may have retained one-quarter for the head office at the sea port as a slight compensation for the clerical labor involved in handling these accounts.

Q. There was no agreement as to what should be done with it among the lines? A. There was no standard basis.

Q. So that any line might do as they pleased for that matter as to how much it should retain for itself



and as to how much it should pay out to the booking agent or the general passenger agent? A. They had a range of prices from Montreal all along the Atlantic coast with the numerous lines and railroads radiating from each port to all parts of Europe; the idea was to standardize and—

Q. That is, that all the lines should act in the same way in regard to the matter? A. Making a uniform basis covering the specific tender and if any part of that rail commercial allowance which was remitted to the booking agent should in any wise be divided, directly or indirectly, with the passenger or anybody else the agents would be immediately cancelled by all lines.

1244

Mr. Dorr: Move to strike that out as not responsive.

Q. Just answer the question, if you will, Mr. Sandford; was there any understanding or agreement which was in fact valid by which all the steamship lines which were members of the conferences of which you were secretary allotted a certain portion of the commercial allowance which they received under this agreement with the Western Passenger Association as to east-bound traffic to their booking agents? A. To the best of my knowledge it was not until about March of this year.

1245

Q. And what was the arrangement which was adopted at that time? A. To standardize on the basis I have just stated.

Q. That is on the basis of—? A. One-half to the booking agent.

Q. One-half to the booking agent in the field and the rest should be disposed of as the lines saw fit? A. Either entire to the general passenger agent having jurisdiction in the territory where the booking occurred or a quarter, in which event the remaining quarter would be retained by the steamship offices.

*Lawson Sandford*

1246

Q. But the steamship line was not in any event to retain more than one-quarter, is that what I am to understand, or it was at liberty, if it saw fit, to retain half? A. Yes, absolutely.

Q. It was at liberty to retain the half? A. Yes.

Q. Now, go to the central passenger district on eastbound traffic, what were the arrangements with the Central Passenger Association in regard to allowances on that traffic; when were they made and are they still in effect; just give us the history of it? A. It was made in the autumn of 1908, ten per cent, maximum \$1.50.

1247

Q. That also merely covers the allowance in the transportation in the territory of the Central Passenger Association? A. Either originating in or passing through.

Q. That is, exclusive of the commercial allowance on transportation in the territory of other associations? A. Separate entirely.

Q. Was that commercial allowance collected substantially in the same way as the commercial allowances on the western territory? A. From the railroads eventually on the production of coupons validated.

Q. Substantially the same method? A. Substantially.

1248

Q. And the transportation which originated in that territory, the bookings were made substantially in the same way? A. Practically.

Q. How long did that arrangement remain in force? A. It is still in effect as far as I know; it was in April.

Q. Was that arrangement embodied in any more formal agreement than what purports to be letters exchanged between the steamship lines and the passenger associations appearing in the Government Exhibit No. 46? A. The letters are the record.

Q. There is no other written record of the transactions that you know of? A. No.

Q. Was there any agreement between the members of the conference lines as to the disposition of the commercial allowance on eastbound traffic which was received from the lines operating in the central passenger association district? A. The circumstances are identical practically with the narrative I have just given you about the general eastbound situation existing in the west.

Q. That is by the same minute 184 there was a proposition which was made but not at that time confirmed and the substance of which was later adopted in March of this year? A. For business originating in America.

1250

Q. Now, in regard to the trunk line association on eastbound traffic, Mr. Sandford, what arrangements were made in regard to that, if any, and when? A. There were none.

Q. Had there ever been any to your knowledge? A. No.

Q. Had there been negotiations with the trunk line association with regard to such allowances on behalf of the steamship companies? A. For eastbound business originating in the trunk line territory?

Q. Yes? A. Nothing of any consequence.

Q. Are there any other agreements in any other territories or any other associations? A. Eastbound.

1251

Q. Eastbound, yes; in the southeastern for instance, or the southwestern. Do you want to look at the map (handing witness map)? A. Eastbound none.

Q. There was no arrangement as to southwestern or as to southeastern on eastbound? A. I think that the arrangements with the Western Passenger Association lines covered business originating in some parts of Texas.

Q. That is the Southern Pacific arrangement did, did it not? A. I think so; I don't care to testify about that; I do not feel competent.

*Lawson Sandford*

1252

Q. That would be your understanding in the matter? A. I am hazy on these details.

Q. Now, as to the southeastern? A. None.

Q. There were no arrangements as to southeastern? A. There were arrangements; whether they are joined with the American railway groups or not I am not familiar with at the moment; there are arrangements for business originating in Canada.

Q. But on traffic originating in the southeastern or southwestern territory which passed through the territory of the western or central passenger association there would be the allowances for transportation in those territories, would there not? A. What little business could pass, maybe they would, but there is very little business from the southeastern territory.

1253

Q. That would come up by steamship lines? A. There is very little business.

Q. When you speak of the territory covered by the Western Passenger Association have you had in mind that territory which is designated in white on this map, but which does not have any special application on the colored key? A. The answer made in regard to the commercial allowances west of Chicago and St. Louis was intended to cover all of the western territory because, as I stated, that west of the Missouri River gateways, the commercial allowance east, of east-bound, is seventy-five cents up to those gateways.

1254

Q. Commercial allowances were actually received by the ship lines from the lines operating in the central passenger association territory, were they not, in pursuance of the agreement which you have mentioned? A. Yes.

Q. And have been and were up to the time your connection with the matter ceased? A. Yes.

Q. And may be now, so far as you know? A. I think I testified yesterday that the clearance of all of these routine matters were not done by the conference office, but by the individual lines.

Q. Yes, I understand that. Was there any commercial allowance on eastbound traffic originating in the New England Passenger Association territory? A. No.

Q. How about the Eastern Canadian Passenger Association territory; I suppose none of that traffic came through Atlantic ports of the United States? A. No.

Q. Then, as to the Eastern Canadian Passenger Association territory you have no distinct recollection one way or the other? A. There is probably a commercial allowance taking in both of those—I think there is a mixture of territory, there, part under the jurisdiction of the so-called central passenger and part under some other Canadian Passenger Association. You see they have a mark here on this map itself.

1256

Q. It is a certain joint territory? A. Joint territory.

Q. Now, in regard to the westbound traffic, did you have any arrangement with the passenger associations as to that westbound traffic? A. Yes, we discussed that fully yesterday, the arrangement made in 1897.

Q. I want to run over it so as to get it in chronological order, if we can; that arrangement was made in 1897? A. Yes.

Q. You are sure it was not made in 1894 and the supplemental agreement in 1897? A. I think the so-called through booking route of the steamship lines was established about 1894, but that there were no relations between carriers until 1897.

1257

Q. That is, the steamship companies arrangement for the—how do you describe it? A. Through booking.

Q. There was no arrangement with rail lines until 1897? A. No.

Q. What did that agreement of 1897 provide? A. You have it in the exhibit marked and corrected up to 1895.

*Lawson Sandford*

1258

Q. State briefly your recollection of it so that it will appear in the record, if you will; what is your recollection of it? A. Simply that the steamship lines through booked—that their orders for inland transportation are honored by the railroads who bill them in due course.

Q. And what provision was made for a commercial allowance, if any? A. The commercial allowance at present is—I am speaking in general terms—

Q. Give it to us as it was in 1897, if you can, and then trace down any changes, if there have been any?

1259 A. Yes, there have been one or two slight changes.

Q. What is your best recollection as to the amount of the commercial allowance provided in 1897? A. Ten per cent, with a maximum which varies in different western territories, depending upon the cost of the rails booked; I think that maximum today in any part of the United States or Canada is \$4.

Q. That is the maximum in the western territory or the maximum for all territories? A. Any territory.

Q. Do you mean a maximum for inland transportation in western territories, or the maximum of \$4 for all commercial allowances on all territories from the Atlantic coast to the western seaboard? A. I think the maximum on New Orleans is probably \$2, although the rail fare is a trifle over \$20.

1260

Q. I think we are at cross purposes, Mr. Sandford; when you speak of a maximum of \$4— A. Let us confine that to the main body of the western states.

Q. You are referring merely to the territory included in the Western Passenger Association? A. And also the trans-continental so-called.

Q. But you are not referring to transportation of westbound traffic through the Trunk Line Association territory, or through the Central Passenger Association territory, are you? A. That applies to the through rail transportation that commercial allow-

ance; the commercial allowance is a percentage on the rate with a maximum; the rail fare from New York to San Francisco is about, say \$65, the emigrant rate; the commission would be ten per cent, maximum \$4.

Mr. Spooner: Do you claim this is within the issues made by the pleading?

Mr. Dorr: Yes, in this way; we charge in that bill that various and divers other methods by which the defendant lines sought to compete unfairly and put out of business the independent lines. Now, we take it that this is one of the most effective methods that the defendant steamship lines adopted. You will recall in the exhibit which I put in this morning there is an express provision in the agreement between the Western Passenger Association and the conference lines that such a commercial allowance shall not be paid to any steamship line which is not a member of the conference. That is, the defendant lines were enabled by those means to secure from the railroads certain sums which they made the railroads agree not to pay to independent lines, even though those independent lines rendered the same kind of services, and the Government shall urge most strongly that that was unfair competition, and was only possible by reason of the combination of these steamship lines. But for the combination of the steamship lines and through concerted action such an arrangement, the allowance itself could not have been obtained and certainly could not have been made exclusive as against any particular line.

Mr. Spooner: That is a frank and entire statement and about the most illuminating thing that has happened since the examination began.

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Q. Let me see if we understand each other. I understood that on the eastbound traffic where you spoke of a certain commercial allowance, for instance, from the Western Passenger Association, that that allowance merely applied to the transportation which took place in the territory of that Western Passenger Association, and that there was another allowance which was also received by the steamship companies involved out of the transportation which occurred, for instance, in the territory of the Central Passenger Association; am I right in that? A. I think your statement conflicts, the latter part with the first part. I think I know what you want.

1265

Q. Then tell me? A. If a passenger originates in the City of San Francisco and is bound for Procton, for instance, he is provided with transportation through, and in making settlement along the line there are naturally various zones, the western zone, the ocean zone and the European zone. Now, for bookkeeping purposes there have to be sundry columns for the through transaction; when you take a railroad trip from New York to San Francisco you have a coupon ticket, without being coupon all the way through. This is what the arrangement means; the railroad has to have through booking arrangements, otherwise passengers would get lost; the whole purpose of this arrangement is to simplify the travel of the third class passengers in the same way you travel if you go to San Francisco on a coupon ticket.

1266

Q. Cannot you confine yourself to the point to which my questions are addressed? A. I am doing the best I can.

Q. Now, to come back to the eastbound traffic, you spoke of a certain arrangement for a commercial allowance by the Western Passenger Association, the allowance which you spoke of was an allowance upon the transportation which occurred in the territory of



that association, was it not? A. I will have to answer it by the illustration that if the coupon book is issued by the New York Central on a line that it does not own it naturally pays that line for the ticket.

Q. Now, after having spoken in parables, suppose you answer my question? A. I thought you would be familiar with the railroad tickets.

Q. You can assume complete ignorance on my part of everything? A. It is awful hard to explain this steamship business in two or three days.

Q. Now, answer this question; when you speak of the commercial allowance being allowed by the lines operating in the Western Passenger Association territory, that allowance is merely for the transportation in that particular territory, is it not? A. Precisely.

1268

Q. And a separate allowance is made for that part of the through transportation which occurs in the territory of the Central Passenger Association, is it not? A. Yes; as a matter of fact two voucher coupons are used, one for the western and one for the central.

Q. Now, in regard to the westbound traffic, when you speak of the commercial allowance being made by the lines operating the western passenger association, are you referring to an allowance made for that part of the transportation which occurs in the territory in which the lines which are members of that association operate? A. I am getting rather bewildered, Mr. Dorr.

1269

Q. I will reframe my question? A. Will you let me explain in my way what I think you want to know?

Q. You seem to have bad luck in guessing what I have in mind? A. It is pretty hard.

Q. In regard to the westbound traffic, is there the same division of commercial allowance according to the territory through which the transportation takes place as in the east or a similar division? A. Yes; I believe—

*Lawson Sandford*

1270

Q. Now then, we will begin with the east and go west and see if we can get the thing a little clearer, leave the western passenger association Agreement now and come to the Trunk Line Association territory. Was there, during the period to which we have referred, any agreement between the steamship lines which you have mentioned and the rail lines operating in the Trunk Line Association territory as to a commercial allowance on westbound traffic? A. The Trunk Line—

1271

Q. Was there any such agreement; can't you answer that, yes or no? A. There was no agreement up to a short time ago with the Trunk Line Association, but they voluntarily paid a proportion based upon their rate of rail commercial allowance for the business passing through their territory and destined beyond it.

Q. When did the railroad lines operating in the Trunk Line Association territory begin, so far as you know, to pay a so-called commercial allowance to the steamship lines on westbound traffic destined to points in the Trunk Line Association territory or passing through that territory to— A. I have answered, the passing through.

1272 Q. When did it begin I am asking you now? A. Before I was born, I think.

Q. You don't know anything about it? A. It is too far back.

Q. When did you first have knowledge of such an arrangement? A. I have known of it ever since I have been in the business.

Mr. Spooner: What do you mean by that?

The Witness: As I said a long time ago, the Trunk Line Association participated in the commercial allowance payment on westbound emigrant business based upon their rail fare for all passengers passing through and destined beyond Trunk Line Association's termini.

Q. I will reframe my last question and divide it into two questions; now, Mr. Sandford, was there in 1893, the practice or an agreement or understanding by which the Trunk Line Association paid to the ship lines which are represented in the conference which we have mentioned, a so-called commercial allowance on westbound traffic to points destined in the territory of the Trunk Line Passenger Association; if you know of any such arrangement or practice? A. At one time, the Trunk Line did pay on what is called—

Q. When was that, do you know? A. I cannot tell you the date—on what is called Trunk Line local points.

1274

Q. That is what I am asking about, Trunk Line local points? A. Commencing in February, 1912, they resumed that payment, the ten per cent payment on rail fares to points in the Trunk Line local territory in excess of \$2.50.

Q. Was there any maximum on that? A. There could be none.

Q. And that commercial allowance was—is there any provision among the members of the conference as to the disposition of that commercial allowance by the ship lines? A. Yes, I think that was completed in April.

Q. What is that arrangement? A. One-half to the booking agent.

1275

Q. Now, as to the westbound traffic not destined to local points, but passing through Trunk Line territory, what, if any, arrangement has existed as to that and state, if you can, its history? A. We are talking of the Central Passenger territory?

Q. No, I am talking of the Trunk Line Association; you have already given some testimony about it, but I want the through traffic passing through the Trunk Line Association territory? A. For this business destined to points beyond the Trunk Line local

*Lawson Sandford*

1276

territory, the steamship lines receive up to the gateways of the western passenger territory from the Trunk Line, a commercial allowance of 10 per cent, maximum \$1.50, varying; from New Orleans I think a maximum of \$2.

Q. How long has that arrangement been in force?

A. Many years.

Q. And it has not varied substantially in its terms?

A. No.

1277 Q. Is there any arrangement or agreement or understanding among the ship lines as to the disposition of that commercial allowance? A. I think I am only speaking hearsay, because I don't know whether these plans were put in operation; when I left the conference, they were not completed; one-half to the booking agent and at least a quarter to the general passenger agent, some lines retaining one-quarter for themselves.

Q. Prior to that time, there wasn't any agreement or understanding among the lines? A. There had been rather a chaotic business, some lines paying out the full amounts to the booking agents, and other lines not doing so.

1278 Q. To come to the Central Passenger Association, was there any agreement? A. I have known that there was no arrangement with the Central Passenger Association direct.

Q. Let me put my question direct, if you will; coming to the Central Passenger Association territory and the rail lines operating therein, was there any agreement between the ship lines and those rail lines as to a commercial allowance on traffic destined to local points in the territory covered by that association? A. No, my previous answer covers your question; that Trunk Line Association—

Q. I can understand; that is enough; your answer is quite clear, I think. Now, was there any

agreement with the Central Passenger Association as to through traffic passing west and through traffic passing through Western Passenger Association points? A. No.

Q. For the same reason you formerly explained?

A. You did not let me finish my explanation.

Q. Well, the record stands as it is? A. You will have a nice looking record.

Q. The Central Passenger Association territory merely goes to the gateways of the western territory, or is there a border line there? A. There may be some common territory; I am not sure without looking at the map.

1280

Q. But there is no special agreement as to that common territory as far as you know? A. As far as the steamship lines are concerned?

Q. Yes, as far as the commercial allowances go? A. As to the amount to the sub-agent?

Q. Yes? A. I think it all was settled on a standard basis, one-half to the booking agent now all over the territory of the United States.

Q. Then coming to the Western Passenger Association territory, what, if any, arrangement or agreement exists, or has existed, between the rail lines and the ship lines covering transportation in that territory? A. The arrangements made in 1897.

1281

Q. Which you have previously mentioned? A. Previously mentioned.

Q. What do they provide for? A. I have already stated that.

Q. State it here again so that we may have all this information together? A. I will see if I can recollect what I said before.

Q. State the facts? A. I don't know.

Q. As you now recall it? A. I wouldn't attempt with the document before you.

1282

*Lawson Sandford*

Q. Give me your best recollection as to what the agreement was between the lines operating in the Western Passenger Association territory and the ship lines as to westbound traffic and commercial allowances? A. The arrangements are in writing and I attempted once before today to state my best recollection of them, and I would not care to try it again; I might not hit the exact and same phraseology.

Mr. Spooner: They are all in writing?

The Witness: Yes, sir.

1283

Mr. Spooner: Those in respect to which you have testified and which you now testify to are absolutely in writing?

The Witness: Yes, sir.

Mr. Spooner: We object to it on the grounds I have already stated.

Q. Will you kindly answer my question? Give me now your recollection? A. The steamship lines through book their passengers—

1284

Q. As to commercial allowance? A. They receive from the railways who honor their inland orders a bill with the rail orders which the steamships issue as a voucher and they receive in due course or at the same time, the commercial allowance which we have so laboriously developed.

Q. Now, will you state whether that commercial allowance has been the same through the period from 1897 down to the present time or whether it has varied? A. Are we talking of the Western Passenger Association?

Q. Yes? A. There has been a basis of 10 per cent with a varying maximum; the maximum at present is \$4 to the western part of the United States; the maximum in British Columbia is \$4, in the Province of Alberta, Saskatchewan and Manitoba, I think it is \$2.

Q. Varied substantially or— A. Downward.

Q. It has degrees? A. Yes.

Q. Do the ship lines then receive from the rail lines which operate in the territory of the Trunk Line Association, the Central Passenger Association and Western Passenger Association commercial allowances on westbound business destined to points in the Western Traffic Association territory, both from the Trunk Line Association and from the western lines operating in the Western Passenger Association; do you get that? A. I understand. The Trunk Lines, I think, settle their operations with the steamship lines direct, also as initial carriers for the Central territory; the western railroads own settlements with the steamship lines upon presentation of the voucher.

1286

Q. And the \$4 maximum of which you speak is in addition on westbound traffic to, we will say, points in the very far west—is it in addition to the \$1.50 maximum which the ship lines receive from the Trunk Line Association? A. No.

Q. It is not in addition? A. No; that is the maximum allowance on a through ticket.

Q. That is the maximum of the joint commercial allowance, or the whole of the commercial allowance allowed by the Trunk Line Association and the Western Passenger Association? A. That is the sum total for a through ticket to any point.

1287

Q. Is there any arrangement, or has there been any arrangement among the ship lines which you have mentioned as to the disposition of the commercial allowances, so-called, received from lines operating in the western passenger territory? A. I think I have testified several times before this morning that I believe—

Q. I am referring now to the westbound traffic and not to the east? A. I believe that you can find

*Lawson Sandford*

1288

circulars now in the hands of all agents notifying them on the part of the lines employing them individually that the rail commercial allowance to through points is 5 per cent of the rail money, and that they may deduct that rail commercial allowance when remitting for the railroad ticket.

Q. How long has that agreement or understanding been in effect as to this westbound traffic in the Western Passenger Association district? A. The standardization?

1289

Q. How long has the arrangement or understanding which you have just referred to in answer to my last question as to the disposition of the commercial allowance from the lines operating in the Western Passenger Association territory on westbound traffic been in operation? A. It is possibly a month, provided the action was completed.

Q. Was there any understanding or arrangement prior to that time among the various lines as to the disposition of this commercial allowance? A. A general basis, but—

Q. You don't know whether at the present time it is existing or not? A. No, but I think so.

Q. What is your information? A. I think so; I have not even any information.

1290

Q. You knew some such arrangement was adopted, didn't you? A. I was trying to put it into operation when I resigned.

Q. And you have since seen circulars? A. No; I have not.

Q. Or been told of the issuance of circulars? A. I have not even been supplied with those; I am doing other business.

Q. Prior to this agreement that you were endeavoring to put in operation a few months ago, was there any understanding between the lines as to the disposition of this commercial allowance which I men-



tioned in my last question? A. Probably, up to within a period of five or six years the lines were working on a basis referred to; in the past four or five years there has been deviations, but if the action contemplated has been taken, the basis is now standard.

Q. Referring to Exhibit No. 59, the minutes of the joint meeting of the Trans-Atlantic Passenger Conference with the advisory committee of the emigrant bureau of the Western Passenger Association—  
A. I think that was a committee meeting, Mr. Dorr.

Q. I call your attention to the paragraph on page 15 of Exhibit No. 59 which reads as follows: "In reference to the payment of commissions to the Northwest Transport Company, the understanding was reached that the question would be taken up with the Grand Trunk, Canadian Pacific and Inter-Colonial Railways, with a view to having them discontinue the payments of commission through Canadian ports to outside lines." Do you recall what action was taken by the Canadian Pacific thereafter in regard to that matter? A. No, I do not.

1292

Q. With these lines relative to that matter? A. No.

Q. I show you Government Exhibit No. 13 for identification which purports to be a letter addressed to you under date of February 28th, 1907, by C. B. Richard & Company, general agents for the Russian Volunteer Fleet; will you look at that and I ask you whether you ever received the original of that letter? A. It is a typical letter; I think I must have had it; there were numerous letters from Mr. Richard and I had many conversations with him.

1293

Q. Did you write any reply to this letter, Exhibit No. 13? A. Either verbal or in writing I did.

*Lawson Sandford*

1294

Mr. Dorr: I offer the letter, Exhibit No. 13 for identification, in evidence.

Mr. Deuel: Objected to on behalf of the Russian East Asiatic Line.

Mr. Beers: Objected to as incompetent, irrelevant and immaterial.

Exhibit 13 for identification received in evidence.

Q. Have you any copy of the answer that you sent? A. No.

1295 Q. If you sent an answer in writing, would you have a copy? A. I have no access to the files of papers.

Q. It would be among the files of the conference papers, would it not? A. I don't know.

Q. Did you keep copies of the letters which you wrote as secretary of the conference? A. As a rule, yes.

Q. Would you keep in the ordinary course of business a copy of a reply to a letter on this subject matter? A. I think so.

1296 Q. So that if you wrote a reply to this letter, it would be in the ordinary course in the files of the conference which you left in the office of the conference when you ceased to be secretary? A. I cannot be sufficiently positive.

Q. I am talking about the ordinary course of business? A. Because it was testified yesterday that after a subject had apparently ended, we usually destroyed papers that were no longer of use to us.

Q. When the Russian Volunteer Fleet went out of business you did regard the subject matter of this correspondence at an end, I suppose? A. I don't know what they did.

Q. Did you destroy the correspondence relative to the Russian Volunteer Fleet which you had? A. I don't know.

Q. If you did not destroy it, it would still be in the ordinary course, in possession of the conference?

A. Yes. I might say if a letter like that was received and transmitted to the lines interested, it is possible that they made no reply.

Q. Do you recall whether or not the subject matter of that letter was taken up at a meeting of the Continental Conference in New York? A. I don't know whether it was or not. Mr. Richard wrote us a great many letters and made a great many threats.

Q. What steps did you take to investigate the complaint which Mr. Richard made in this particular letter? A. My duty would simply be to transmit a copy of the letter to the lines apparently interested.

Q. Do you know of any investigations which were made as to the character of these statements? A. No.

Q. If such investigations were made, would they be ordinarily put in the minutes of the conference at which the discussion took place? A. There would be no fixed rules for handling it. I think Mr. Richard's communications were usually not answered by the lines.

Mr. Dorr: I offer in evidence minutes of the American Atlantic Conference of June 25th, 1908, minutes numbers 1, 2 and 4.

Marked Petitioner's Exhibit No. 62.

Also minutes of the American Atlantic Conference meeting of July 2nd, 1908, minutes numbers 9, 10 16 to 28 inclusive.

Marked Petitioner's Exhibit No. 63.

I also offer in evidence minutes of the American Atlantic Conference of July 23rd, 1908, minutes Nos. 30 and 32.

Marked Petitioner's Exhibit No. 64.

1300

I also offer in evidence minutes of the American Atlantic Conference meeting of July 30, 1908, minutes Nos. 35, 38, 40, 44.

Marked Petitioner's Exhibit No. 65.

I also offer in evidence minutes of the American Atlantic Conference meeting of August 13th, 1908, minutes Nos. 49, 51, 52, 54, 59, 62, 63, 66 to 68 inclusive.

Marked Petitioner's Exhibit No. 66.

I also offer in evidence minutes of the American Atlantic Conference meeting of September 3rd, 1908, minutes Nos. 70, 80 to 87 inclusive.

1301

Marked Petitioner's Exhibit No. 67.

I also offer in evidence minutes of the American Atlantic Conference meeting of September 17th, 1908, minutes No. 92.

Marked Petitioner's Exhibit No. 68.

I also offer in evidence minutes of the American Atlantic Conference meeting of October 15th, 1908, minutes Nos. 99, 109 to 111 inclusive.

Marked Petitioner's Exhibit No. 69.

I also offer in evidence minutes of the American Atlantic Conference meeting of November 19th, 1908, minutes Nos. 113, 118 and 121.

Marked Petitioner's Exhibit No. 70.

1302

I also offer in evidence minutes of the American Atlantic Conference meeting of January 7th, 1909, minutes No. 128.

Marked Petitioner's Exhibit No. 71.

I also offer in evidence minutes of the American Atlantic Conference meeting of March 19th, 1909, minutes Nos. 134 and 136.

Marked Petitioner's Exhibit No. 72.

I also offer in evidence minutes of the American Atlantic Conference meeting of April 2nd, 1909, minute No. 138.

Marked Petitioner's Exhibit No. 73.

I also offer in evidence minutes of the American Atlantic Conference meeting of April 15th, 1909, minutes Nos. 139, 140 and 143. Marked Petitioner's Exhibit No. 74. 1303

I also offer in evidence minutes of the American Atlantic Conference meeting of June 3rd, 1909, minute No. 167.

Marked Petitioner's Exhibit No. 75.

I also offer in evidence minutes of the American Atlantic Conference meeting of November 9th, 1909, minutes Nos. 184 to 189 inclusive.

Marked Petitioner's Exhibit No. 76.

I also offer in evidence minutes of the Continental Conference meeting of October 7th, 1907, minute No. 1064. 1304

Mr. Spooner: Object as incompetent and irrelevant. It relates to a period prior to the agreement "A" and to another conference.

Marked Petitioner's Exhibit No. 77.

I also offer in evidence minutes of the Continental Conference meeting of October 17th, 1907, minutes Nos. 1053, 1054 and 1059.

Mr. Spooner: Same objection.

Marked Petitioner's Exhibit No. 78.

I also offer in evidence minutes of the Continental Conference meeting of January 21, 1908, minutes 1074, 1075, 1076 and 1083. 1305

Mr. Spooner: Same objection.

Marked Petitioner's Exhibit No. 79.

I also offer in evidence minutes of the Continental Conference meeting of September 3rd, 1908, minutes Nos. 1319 to 1321 inclusive.

Mr. Spooner: Same objection.

Marked Petitioner's Exhibit No. 80.

Mr. Spooner: I want to make a general objection to the minutes on the ground that they are incompetent and irrelevant, and sub-

1306

*Lawson Sandford*

ject to the right of the defendants under the stipulation hereinbefore entered into to make hereafter objections to the whole or any part thereof specially.

Q. Mr. Sandford, we will go back once more to that arrangement between the ship lines and the railroads on westbound traffic; is there an understanding or an agreement between the ship lines which you have mentioned and the rail lines as to the routing of the westbound passengers which are transported to this country by the ship lines?

1307

Mr. Beers: I renew my objection to this line of testimony.

A. Western or Central or Trunk Line?

Q. Well, as to any of them? A. The understanding is—

Q. I have not asked that? A. There is—

Q. What was the idea? A. Our absolute clear understanding.

Q. With which of the lines? A. With each group of railroads.

1308

Q. Do the orders which the steamship company issue prepaid or cash for westbound traffic, designate by what rail line the inland transportation in this country on westbound traffic shall be had? A. The invariable custom is to route the business in accordance with the wish of the passenger.

Q. That does not answer the question. Pay attention to what I am saying, if you will; do the orders on railroads on westbound traffic, whether prepaid or cash, issued by the ship lines, designate the rail lines which shall do the inland transportation in this country? A. No, not as a general thing.

Q. That is enough, unless it is inaccurate? A. It is not a fair answer.

Q. Then go ahead? A. What did I say?

(Answer read.)

Q. Is that true as it stands? A. No. The request for specific routing by a passenger is always observed by the railroads.

Q. It is true as a general thing, is it not, that the rail line is not designated? A. It is not designated.

Q. That is true as a general thing? A. Yes.

Q. What did you mean just now when you said it was not accurate? A. You asked me for the general habit of doing business?

Q. Yes, and you gave it to me, did you not? A. The general habit is to issue a rail order.

Q. As a general thing, the rail line is not designated unless the passenger—

1310

Q. On the ship line order? A. Unless the passenger elects to travel by a certain route

Q. Now, on the arrival of the westbound passenger at this or at other Atlantic ports, do the ship lines make any designation of the rail route which the passenger shall take? A. Not as a general rule.

Q. So that when the passenger arrives here, the steering passenger arrives here, and is taken off the ship and delivered to the immigration station, the immigration authorities, the rail line by which he shall travel in inland transportation is not yet designated? A. No.

1311

Q. But the group of lines over which he may travel is governed by those lines with which the steamship lines have that agreement, is it not? A. The railroads attend to the routing.

Q. I am coming to that presently. If a rail line is not a party to the agreements which you have mentioned, then is the general order of the steamship line which it gives to this passenger good for transportation on that line? A. I would not be able to give you a good answer to that question.

Q. Cannot you answer that? A. I cannot give you the answer that you want.

*Lawson Sandford*

1312

Q. Well, all I want is the truth? A. Because there is not an answer.

Q. You mean because there are no such lines? A. No, because the situation does not arise. The steamship lines in making an arrangement with the railways, leave to the railways themselves the entire say as to what railways shall participate in the arrangement.

Q. You mean as to what— A. That it is not a steamship question; that it is a railroad question; a steamship man cannot answer that question.

1313

Q. You have been intimately connected with this business, and as much so as any man in this city, have you not, Mr. Sandford? A. Not so much.

Q. But you have been intimately associated with this business and as much so as any man in this city, have you not, Mr. Sandford? A. Not so much.

Q. But you have been intimately associated with it for fifteen years? A. I have watched the development of the system of the railroad business with a great deal of interest.

Q. And have made quite a course of study of it? A. I have.

1314

Q. Now, then, let me come back to my original question; the ship lines issue certain rail orders to their passengers, whether they are prepaid or cash, do they not, for westbound traffic? A. Yes.

Q. Now, you have stated that those rail orders are given for inland transportation, have you not? A. Yes.

Q. At times it is true, is it not, that there have been lines, rail lines, which carried steerage inland traffic which were not parties to the agreements with the ship lines which you have mentioned? A. I don't know. The routing of inland business is too complicated for steamship—



Q. How about the Grand Trunk, has that always been a party, that you have mentioned? A. Steamship lines have always accepted Grand Trunk listing of steamship orders and paid the Grand Trunk.

Q. Have what? A. Have always accepted Grand Trunk bills for steamship orders listed by the Grand Trunk.

Q. How about the Canadian Northern? A. That is a Canadian proposition, and not an initial line at the United States ports.

Q. No, but how about that; you through route to Canadian points, do you not? A. That is a Canadian question, not a United States question. 1316

Q. I am asking you about the fact? A. I have answered the question.

Q. The point is what is the fact; are your rail orders given over the Canadian Line? A. That has never come up. I should say, yes.

Q. That is, you think if the question did come up, they would be honored? A. Such requisitions would be honored, yes.

Q. I think you testified already that you had an arrangement with the railroad; is it a part of this arrangement with these various passenger associations that the routing of the emigrant for westbound traffic and inland transportation shall be controlled by the routing committee, or the committee of the various passenger associations? A. It is quite understood that that is the way the business is done, except when specific request for a routing is made by a passenger or in behalf of a passenger. 1317

Mr. Dorr: I offer in evidence letter of the Holland-Amerika Line, under date of May 29th, 1906, from the home office to the New York office.

Marked Petitioner's Exhibit No. 81.

*Lawson Sandford*

1318

That is objected to as incompetent and irrelevant and generally on the stipulation heretofore mentioned.

Q. Mr. Sandford, I call your attention to letter of May 29th, 1906, Petitioner's Exhibit 81, and to reference contained therein to the Continental Agreement of 1898; can you tell me whether you ever saw that Continental Agreement of 1898? A. I think I have seen a copy of that agreement; I don't think I ever had one.

Q. Where did you see it? A. In New York.

1319 Q. Who showed it to you? A. I don't remember now.

Q. Did you see it at the office of one of the lines or at the conference office? A. These matters were often talked about at the lunch tables and elsewhere and in the conference office.

Recess taken until 2 P. M.

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*Afternoon Session.*

LAWSON SANDFORD recalled.

1320

*Direct-examination continued by Mr. Dorr:*

Mr. Dorr: Senator Spooner, do you desire to cross-examine Mr. Malinowsky?

Mr. Spooner: He is the gentleman who was examined yesterday?

Mr. Dorr: He is the gentleman at New Britain.

Mr. Spooner: I want to cross-examine him probably, but I am not ready to do it now; can't we arrange that if either side wishes to recall for cross-examination or further cross-

examination, the witnesses called by either side and sworn, that you will bring them if they are in this country?

Mr. Dorr: I haven't the slightest objection to that, as to a witness here in New York, but the witnesses out of town, it is a hardship to them to bring them here a second time. In this particular case if the witness hasn't any objection I haven't. Do you mind coming back Mr. Malinowsky, some other day, and get a separate mileage and separate witness's fee?

Mr. Malinowsky: If I have to come back I will come back. 1322

Mr. Dorr: Are any of the other counsel ready to cross-examine Mr. Malinowsky at the present time?

Mr. Spooner: I may want to cross-examine him some day, and I may not want to cross-examine him at all.

Q. Mr. Sandford, referring again to Government Exhibit 81, this letter of May 29th, 1906, what is your recollection as to whether or not there was a pool agreement in existence in May, 1906, relating to the North Atlantic Steerage Traffic to which the British Lines were a party? 1323

Mr. Beers: It is understood that this evidence is offered over the objection I noted at the outset as to evidence of agreements other than "AA"?

Mr. Dorr: Yes; that is understood.

A. My recollection is—

Mr. Spooner: Was such an agreement in writing?

The Witness: I don't know. I was in the Cunard then.

1324

*Lawson Sandford*

Q. Answer the question the best you can? A. I don't know.

Mr. Spooner: You say you don't know?

The Witness: I don't know.

Q. When did you enter the employ of the Cunard? A. November 1st, 1903.

Q. At the time you entered the employ of the Cunard was there a pool agreement covering the North Atlantic Steerage Traffic to which the British Lines were parties? A. I think not.

1325 Q. Has there been at any time such an agreement to your knowledge prior to 1903 other than the Agreement of 1892, which I showed you yesterday? A. I am not familiar with the Agreement of 1892. I don't know whether the British Lines had participated in any European arrangements for pools prior to that time.

Mr. Spooner: That is, you say you don't know?

Q. You don't know of any such arrangement? A. I am quite sure I do not.

Q. Were the British Lines at that time members of the conferences of which you were secretary? A. Prior to 1903?

Q. Yes? A. Yes.

1326 Q. Were they members of those conferences in 1903? A. In 1903 the British lines were maintaining in America—

Mr. Spooner: Are you going to testify to an agreement?

The Witness: Yes, sir.

Mr. Spooner: In writing?

The Witness: Yes, sir.

Mr. Spooner: I object to it as incompetent.

Q. Have you got a copy of it? A. I have no copy, but you have one in the exhibits.

Q. Which one are you referring to now, the one that is already in evidence? A. The North Atlantic Passenger Conference, the general rules of 1906.

Q. We are talking now about 1903? A. 1896—I beg your pardon. In 1903 I don't know what arrangement existed between the British Lines beyond the North Atlantic Passenger Conference maintained in the United States and Canada.

Q. What were the members of the North Atlantic Conference at that time—who were the members?

Mr. Spooner: At what time?

Mr. Dorr: 1903.

1328

Mr. Spooner: There is a written agreement which showed the members?

The Witness: Yes, sir.

Mr. Spooner: Objected to as incompetent and not the best evidence.

Mr. Dorr: If the defendants desire to produce the documents that show the membership of the Conference Lines in 1903 I have no objection, otherwise I will offer secondary evidence.

Mr. Burlingham: Isn't it already in as Exhibit No. 5?

Mr. Dorr: I don't think that shows 1903, does it?

1329

Mr. Burlingham: Yes. It says dated 1903. It is so described in your subpoena, G; I don't know whether I have it right or not. Perhaps that is not it, but I thought it was.

Mr. Dorr: It may be. The date may put me in mind of it.

Q. I show you Government Exhibit No. 5, which is the exhibit referred to by Mr. Burlingham, and ask you whether that has any reference to the agreement

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*Lawson Sandford*

which you testified to, purporting to be between the N. D. L. V. and the French Line.

Mr. Spooner: That this is a copy of the agreement you referred to?

Mr. Dorr: Yes. Mr. Burlingham thinks it might be, but I think not.

A. This appears to be one of the European arrangements with which I am not familiar. I was answering you in regard to the one arrangement of the British Lines with which I am familiar, that is the North Atlantic Conference maintained in America.

1331

Q. What lines were present or represented at the meetings of that conference in 1903?

Mr. Spooner: Is that in that paper?

The Witness: I don't know, sir.

Q. I am asking you now not for the contents of any written document, but for the witness's recollection as to the actual occurrences; what is your recollection as to what lines were present at the meetings of the North Atlantic Passenger Conference in 1903?

Mr. Spooner: Did you make the record?

The Witness: Yes, sir.

Mr. Spooner: Showing the presence and absence of different lines?

1332

The Witness: Yes, sir.

Mr. Spooner: Object to it as not the best evidence and irrelevant and incompetent.

Mr. Dorr: You understand the making of a written record by the secretary makes him competent to testify as to who were present there and that is the evidence which has any application to any such situation.

Mr. Spooner: Then the objection will be overruled by the Court.

Q. Proceed?

Mr. Burlingham: Who was present?

*Lawson Sandford*

1333

The Witness: The parties to the North Atlantic Passenger Conference in 1903 were the then existing lines between the United States and Canadian ports and Great Britain and Scandinavia.

Q. Were there any other lines engaged in that traffic which were not members of that North Atlantic Conference? A. I think they were all members with the possible exception of the Beaver Line.

Q. With the exception of the Beaver Line? A. It may or may not have been.

Q. In 1904 was there any change in membership? A. I don't believe so.

Q. In 1905? A. Probably no change.

1334

Q. What you mean is your best recollection is that there was no change, is it not, Mr. Sandford? A. Yes.

Q. Now, in 1904, was there not active competition between the Cunard and certain other of the Trans-Atlantic lines? A. Yes.

Q. How long did that competition continue; I am speaking now of the steerage business? A. A year or more.

Q. Referring again to this letter of May 29th, 1906, Petitioner's Exhibit 81, does this refresh your recollection as to whether or not that had terminated in 1906? A. This letter does not help me. I only know that about 1905 the Cunard Line for its service to the Mediterranean and Adriatic was in competition strongly with the Continental group of lines.

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Q. How about the North Atlantic business? A. They were eventually involved.

Q. Were they not also involved in the competition with the Continental Lines as to the North Atlantic steerage business? A. There was constant competition, but you mean in respect to the fluctuations of rates?

*Lawson Sandford*

1336

Q. Yes, do you recall whether or not the Cunard entered into any agreement or arrangement with the Continental Lines as to the North Atlantic Steerage business prior to the Agreement "AA" of February 5th, 1908?

Mr. Beers: Objected to as incompetent, irrelevant and immaterial—not within the issues.

1337

A. There were arrangements subsequently made in Europe between the Cunard Line, more particularly for its Mediterranean and Adriatic service and the Continental lines.

Q. My question is directed to the North Atlantic Steerage Traffic and I ask whether prior to the agreement of February 5th, 1908, there was any agreement by the Cunard with the other lines—

Mr. Spooner: I move to strike out the last answer on the ground that it is not in response to a question and in itself is incompetent and not relevant to any of the issues named in the pleading.

1338

Q. Do you know of any agreement between the Cunard and the Continental Lines as to the North Atlantic Steerage Traffic between 1904 and February 5th, 1908, when Agreement "AA" purports to have been executed?

Mr. Spooner: If there was such an Agreement, was it in writing, do you know?

The Witness: No. I presume it was in writing.

Mr. Dorr: I am not asking for the contents of any document, I am merely trying to find out if there was any arrangement.

Mr. Spooner: You cannot prove the existence of any agreement in an indirect way.



Mr. Dorr: It seems to me we may be allowed to find out if there was any agreement and if there was any—

Mr. Burlingham: Let the question be read

(Question read.)

A. There were arrangements in Europe the nature of which I am not familiar.

Mr. Beers: I move to strike it out.

Mr. Spooner: The question is whether he knows or not whether there was such an agreement, that was the question that was put.

Mr. Dorr: I will consent that it be stricken out unless I further connect it with the defendants.

1340

Q. What was the sources of such information as you had in regard to the existence of arrangements?

A. Letters from the Cunard Company to the New York office with which I was then connected.

Q. And what was the nature of those arrangements so far as you can recall? A. My recollection—

Mr. Spooner: Wait a moment; are they embodied in the letters?

The Witness: Yes, sir.

Mr. Spooner: Where are those letters?

The Witness: I don't know.

1341

Mr. Spooner: We object to the question as incompetent and not the best evidence.

Mr. Dorr: I will call on the defendant Cunard Line to produce the letters between the dates of 1904 and 1908 referring to the arrangement between the Cunard Line and Continental Lines as to North Atlantic Steerage Traffic.

Mr. Beers: Do you now call for them?

Mr. Dorr: Yes.

*Lawson Sandford*

1342

Mr. Beers: If there are any such letters I will produce them. That is, if there are any such letters in the New York agency.

Mr. Dorr: I will suspend my examination of Mr. Sandford then until it can be determined whether or not such letters are in existence or whether it would be proper to continue the secondary evidence. The objection has been raised that Mr. Sandford's knowledge is derived from the written documents or instruments. So far as we know now those written instruments are in existence, and then I take it, it would be improper to ask for secondary evidence of their contents.

1343

Q. Now, as to the other British Lines, other than the Cunard Line, did you have any information—don't state what your information is—but did you find information as to any agreements between any other British Line and the Cunard Line during the period between 1903 and 1908 as to the North Atlantic Steerage Traffic? A. I left the Cunard service on December 31st, 1906. That should be brought in sooner because you asked me a question about—

(Question read.)

1344

at any time during that period? A. General information; no direct information.

Q. From what sources did you derive that general information? A. When in the Cunard service no doubt from the Cunard letters.

Q. Afterwards from what sources? A. General sources; no official sources.

Q. What do you mean by general sources? A. Conversations.

Q. Conversations with whom? A. Sundry steamship men.

Q. Of what line? A. Probably many lines; I cannot specify any lines now.

Q. Were they lines which are now defendants in this bill? A. Probably.

Q. You are pretty positive of that? A. It is five or six years ago.

Mr. Dorr: Now, I will make the same request for the production of the letters of the Cunard Line which contain references to arrangements between the Cunard and other British Lines as to the North Atlantic Steerage Traffic between 1903 and 1908 inclusive—

Mr. Beers: And February 5th, 1908?

Mr. Dorr: Yes, February 5th, 1908.

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Q. Now, as to this information which you derived from general sources, the general sources being merely as you can recall lines or officers of lines, agents of lines, which are now parties to this suit; will you state what your information was, stating as nearly as you can the exact conversation, giving the date of the conversation, the name of the person with whom it took place; if you cannot recall those details give the substance?

Mr. Spooner: That is supposed to elicit the conversation with somebody he doesn't remember.

Mr. Dorr: Some person representing some one, or the other, or all of the defendant lines.

Mr. Spooner: Whom he does not remember?

Mr. Dorr: If he remembers I would like to have the name.

Mr. Spooner: If he doesn't remember, what—

Mr. Dorr: Then we will have to take the best he can give us.

1347

*Lawson Sandford*

1348

Mr. Spooner: Now, if you remember, name the person?

The Witness: No, I do not.

Mr. Spooner: From whom or with whom you had the conversation, or from whom you derived the information; we don't object to it. If you cannot and want to speak out of the air so to speak, why we want to register an objection to it because we cannot contradict it.

1349

Q. One further preliminary question; the persons with whom you had these conversations were persons whom you met and had these conversations with while you were acting as secretary of the conference of which you have spoken? A. Subsequent to returning to the conference service, yes.

Q. These persons whose names you cannot now recall were officers or agents or employees of lines which were members of the conferences of which you were secretary? A. Yes, those would be the source of my knowledge.

Q. Now, let us have the recollection which you have?

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Mr. Spooner: We object to it, his stating any conversation if he can't indicate the person with whom he had it; I don't care about the date, but at least the person with whom he had it.

The Witness: That arrangement had been made abroad and whether they were in respect to pools only or pools and rate agreement I don't now remember.

Q. Do you recall learning of a meeting which had been held at Cologne on the 25th day of May, 1906, between certain of the Continental lines and certain of the British lines at which the question of the revival of the so-called Continental Agreement of 1898 was considered? A. I don't remember that.

*Lawson Sandford*

1351

Q. Do you recall whether or not between May 25th, 1906, and February 5th, 1908, learning from the sources which you have described whether or not the British lines other than the Cunard Line had entered into a pool for the North Atlantic Steerage Traffic with the Continental Lines by which the British Lines other than the Cunard were to receive 7.8% of the traffic? A. I do not.

Q. Do you recall whether there was any such arrangement irrespective of an exact percentage? A. No.

Q. Can you state what the practices of booking Continental passengers via certain points mentioned in that letter (Exhibit No. 81) refers to? A. I don't know.

1352

Q. Did you ever hear of any objection made by the British Lines as to the practices of certain Continental Lines under the pool or rate agreements which had existed prior to February 5th, 1908? A. No.

Q. Mr. Sandford, I show you a group of papers and telegrams and ask whether or not that is a set of copies and originals of correspondence exchanged by you with Schiavone? A. Yes.

Mr. Dorr: I ask that this be marked as one exhibit for identification.

Marked Petitioner's Exhibit No. 82 for identification.

1353

Mr. Dorr: I don't think I will examine this witness any further at this time and will reserve the right to call him when we ascertain whether or not it will be necessary or proper for him to give secondary evidence as to the contents of the letters.

Counsel for the defendants reserve the right to recall the witness for cross-examination.

1354

*Anne C. H. Nyland*

ANNE C. H. NYLAND, sworn on behalf of the petitioner, testified as follows:

*Direct-examination by Mr. Guiler:*

Q. What is your occupation, Mr. Nyland? A. I am the passenger agent for the Holland-Amerika Line.

Q. How long have you been connected with the Holland-Amerika Line? A. Almost twenty-five years.

Q. Both in this country and in Rotterdam? A. No, sir; only here.

1355

Q. What positions with the Holland-Amerika Line have you held since that time at the different times?

A. I started with the Holland-Amerika Line as an ordinary clerk, attending to the third class business, at that time at Ellis Island; I became cabin clerk, traveling passenger agent, the manager of the Chicago office and last passenger agent here in New York.

Q. And during part of this time the Holland-Amerika Line has been connected with a conference called the American Atlantic Conference, has it not? A. Part of the time, yes.

Q. Approximately from what time to what time? A. I believe we were members of the so-called Continental Conference since 1886 up to the present time.

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Q. And does the same apply to the American Atlantic Conference? A. At that time we didn't know of an American Atlantic Conference.

Q. I mean it has been for some time up to the present time a member of the American Atlantic Conference, has it not? A. Yes.

Q. And it has been a member since 1892 of the N. D. L. V., has it not? A. I don't know anything about that.

Q. You don't know whether it has been or not? A. Not to my personal knowledge, no, sir.

Q. I show you that, Mr. Nyland, and ask you whether that will refresh your memory as to whether

*Anne C. H. Nyland*

1357

your corporation, the Holland-America Line, was a member of the N. D. L. V. since 1892, the N. D. L. V. so-called? A. The N. D. L. V. is in Europe, not here.

Q. I don't care where it was; I asked you whether you were a member of it? A. Not to my personal knowledge. Apparently we were a member of it, but not to my knowledge.

Q. You don't remember looking at that agreement there? A. I may have seen it.

Q. You don't remember, having close connection with your corporation at that time, whether it was a member of the N. D. L. V. or not? A. As I said before, not to my personal knowledge.

1358

Q. You know it, don't you?

Mr. Bradley: He says from the knowledge he had, he got from them.

Mr. Guiler: Oh, no; he did not.

Mr. Burlingham: He has answered three times that he didn't know it and now you say he does know it.

Mr. Guiler: He says not to his personal knowledge.

Mr. Burlingham: He may have information, but he cannot have any knowledge that is not personal.

1359

Q. Did any one connected with your line ever inform you that the line was a member of the N. D. L. V.? A. That may have been, yes.

Q. Who was that that informed you? A. I cannot recall exactly who told me, but somebody who was in connection with my company may have told me.

Q. It was an officer of your company? A. Very likely, yes.

Q. But just now you do not recall who it was? A. No, sir.

1360

*Anne C. H. Nyland*

Q. Now, at various time you have served on a so-called small committee, have you not, of the American Atlantic Conference? A. Can you give me the date?

Mr. Beers: Object to the form of the question as characterizing it as a committee of the American Atlantic Conference, and the question designates the committee of the American Atlantic Conference, which I understand is not the testimony as it appears the witness says.

1361 Q. You have been appointed a member of a small committee? A. What small committee do you refer to?

Q. A small committee in order to get at the competition between the American Atlantic Conference and other lines, other outside lines, have you not?

Mr. Spooner: Do you mean the so-called small committees, relating to fighting ships?

Mr. Guiler: Yes.

A. Do I understand you correctly by saying that I served as a member of the committee which should cut out competition?

1362 Q. Yes; which supplied the so-called fighting steamers to cut out competition—to enter into competition with the Northwest Transport Company? A. I have served as a committee member on a committee but this committee was not established for the purpose of cutting out that competition you referred to.

Q. I did not say cut out competition, going into competition with the Northwest Transport Company, the Uranium Line and other outside lines? A. I don't conceive it in that way.

Q. When was that committee to which you are referring appointed? A. It would not be right to say—

Q. When was it appointed? A. What committee do you refer to?

Q. The committee you refer to.



*Anne C. H. Nyland*

1863

Mr. Spooner: If you want to ask about the fighting ships committee, ask him.

Mr. Guiler: He understands perfectly well what I am asking about.

Mr. Burlingham: Read the question.

(Question read.)

Q. I mean the committee which was to supply the fighting ships, when was that appointed? A. That committee sometime in the spring of 1908 to the best of my recollection.

Q. Who constituted the so-called small committee, or who instructed it to be formed? A. I presume the general manager of the line. 1364

Q. Now, I show you here a letter dated May 28th, 1908, from the Holland-Amerika Line to the Holland Amerika Line and ask you whether this refreshes your recollection as to who appointed that small committee, and whether it was appointed in Europe or not? A. (After reading from letter book.) This letter speaks for itself.

Q. No, I was asking you for your recollection? A. According to this letter the committee had been appointed upon a cable from Europe.

Q. From whom? A. According to the letter a certain Mr. Peters. 1365

Q. To whom? A. It must have been received by the conference here.

Q. And the order was issued to you from the American Atlantic Conference that you were appointed by the American Atlantic Conference—

Mr. Spooner: Objected to as leading.

Mr. Burlingham: He has not said so and there is no testimony to that effect.

Q. Who informed you that you were appointed on that small committee? A. Very likely I was told

1866

*Anne C. H. Nyland*

that I was a member of that committee, but who told me I don't remember.

Q. Were you not present at the meeting at which you were appointed? A. Perhaps not; I couldn't recall.

Q. Do you recall whether that so-called small committee was discontinued and then reinstated later on?

A. To the best of my recollection, yes.

Q. And I show you letter dated April 26th, 1909, at Rotterdam, from the Holland-Amerika Line to the Holland-Amerika Line and ask you if those are your initials on that letter? A. No, sir; not mine.

1367

Q. Have you ever seen that letter before? A. I may and I may not; I don't remember having seen it before.

Q. Whose initials are those on that letter? A. May I see it again? (Letter handed to witness.) I can only surmise; I don't know it, but I can surmise, a certain Mr. Gips.

Q. That signature on the right? A. I don't know, but apparently the signature of one of our directors.

Q. Who? A. Mr. Reuchlin.

Mr. Guiler: I offer the letter in evidence.

Mr. Burlingham: I object to its admission as incompetent and immaterial.

1368

Marked Petitioner's Exhibit #83.

Mr. Beers: The same stipulation with reference to objections applies to the testimony of this witness, as to Mr. Sandford?

Mr. Dorr: Yes; as I understand it applies to all witnesses.

Mr. Beers: That is my understanding also.

Q. Were you appointed a member of the reinstated small committee? A. Yes.

Q. To which that letter refers? A. Yes.

Q. Against whom were the fighting steamers appointed, and against whose competition were the so-called fighting steamers appointed?

Mr. Burlingham: Originally.

Q. Yes; originally or right through?

Mr. Burlingham: In the spring of 1908 you mean?

Mr. Guiler: Yes.

Mr. Burlingham: Answer it.

A. This committee was appointed to undo or offset as far as possible the injury done by the unfair and—

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Mr. Guiler: I object to that.

Mr. Spooner: He is answering your question.

Q. I asked you what ships—I asked you what lines were these fighting steamers or was this competition directed against by your committee. Against what lines and during what periods was this competition of so-called fighting steamers directed? A. Do you mean before or after the reinstatement of the committee?

Q. Before the reinstatement of the committee? A. Against some lines which were not members of the conference.

1371

Q. I asked you what lines, the names of those lines?

A. To the best of my recollection the Russian Volunteer Line and also the Russian East Asiatic.

Q. That was before the committee was reinstated? A. Yes.

Q. Was it directed then against the New York and Continental Lines also? A. To the best of my recollection that line came in later.

Q. That was then after the committee was reinstated, the competition or so-called fighting steamship

*Anne C. H. Nyland*

1372

competition was directed against the New York and Continental, am I right there? A. No, sir; you use an expression to which I can not fully answer yes.

Q. What was the line against which this competition was directed after the committee was reinstated? A. That was taken before.

Q. I mean after it was reinstated, name the lines? A. Against the New York and Continental Lines to the best of my recollection.

Q. Against the Northwest Transport Company? A. That is the same company under another name.

1373 Q. And against the Uranium Line? A. The same company under another name.

Q. Were the New York and Continental Line the Northwest Transport Company and the Uranium Line, the same corporation? A. I couldn't tell you. I only know that the same ships were sailing in their service these three times.

Q. Were they all sailing at the same time during this whole time? A. No; one after the other.

Q. I mean were the same ships sailing for the separate companies, or the different named companies, during all of this period; you have spoken of the same ships as having sailed? A. They may have added a steamer or they may have taken off a steamer.

1374 Q. But substantially they were the same ships that were sailing all of this time? A. To the best of my recollection, yes.

Q. What steamers did your committee from time to time direct to run against these various lines? A. Not direct; suggest you mean?

Q. Suggest. Well, what steamers did you suggest to run against these various lines? A. That depended on the circumstances or the conditions.

Q. Don't you remember, can't you give us the names of some of the steamers? A. I remember that one steamer of our lines was suggested, the steamer Noordam.

*Anne C. H. Nyland*

1375

Q. Do you remember the names of any other steamers which were suggested by your committee to sail against the steamers of these various lines? A. I know various steamers were selected, but I don't recollect exactly what steamers they were.

Q. Was the Vaterland ever selected? A. It may have been.

Q. Your recollection is that it was, isn't it? A. Not exactly; it is possible; I will not deny that it was so.

Q. Supposing that these steamers of the competing lines, were stated to sail on a particular date, at what time did you suggest that your steamer should sail? A. Generally the steamer sailed on the same dates.

1376

Q. And about the same time? A. That was immaterial.

Q. And did you suggest that the rates of sailing of those steamers should be about the same as the rates of the competing steamers? A. The same or higher.

Q. There are many cases, however, where it was the same, are there not? A. No; not always.

Q. But substantially most of them were about the same? A. No; not to my recollection.

Q. Was there ever a case where you cut under the rate of the other steamer? A. No, never.

Q. Did you have power on various occasions to cut under the rate of the other steamers if circumstances so required? A. We did not have power; we only could make suggestions.

1377

Q. Did you ever suggest that the rate of the competing steamers be cut under? A. Not to my remembrance.

Q. But you are positive that it was never cut under, are you? A. As far as I recollect it was never cut below the rate of the other steamer.

Q. Did your committee at that time suggest that the Graf Waldersee of the Hamburg-American Line

1378

*Anne C. H. Nyland*

should sail on January 15th, 1910, against the steamship Uranium of the Northwest Transport Line at the same rate as the—

Q. No, at \$24? A. It is possible; I don't remember.

Q. I show you this circular here marked Hamburg American Line and dated January 8th, 1910, and ask you whether your committee suggested a rate of \$24 on that sailing of the Graf Waldersee at or about that date? A. It may have been.

Q. Was it; have you seen that circular before? A. Very likely.

1379 Q. You have seen it? A. Very likely.

Q. Don't you remember that you have seen it? A. This same circular? No, sir.

Q. Not the same one, but one similar to it? A. I don't remember, but it is very likely.

Q. Is that the regular form issued by the— A. May I explain; I may have been absent from the city when that occurred and very likely as it occurred in January; I usually am on a business trip in January, so very likely I did not see that circular.

Q. You know from looking at that circular that that boat did sail on that date, don't you, and from your recollection? A. According to the circular that steamer should have sailed on that date, yes.

1380

Q. You remember that she did, don't you? A. No, sir.

Mr. Guiler: I offer the circular in evidence.  
Marked Petitioner's Exhibit No. 84.

Q. What was the rate at which tickets were offered to the public under that circular? A. It must have been \$24.

Q. Was that the regular rate for those steamers? A. I could not say off-hand.

*Anne C. H. Nyland*

1381

Q. I show you that again and ask you whether on looking at that it refreshes your memory as to whether that was the regular or reduced rate for that sailing? A. The circular states it was a reduced rate, so it must have been.

Q. The regular rate was much in excess of that, wasn't it? A. Very likely, sir.

Q. Don't you know? A. No. Do you think I would remember every matter two years ago?

Q. No, I asked you do you remember? A. No, sir, I do not.

Q. Don't you know that the regular rate was about \$35? A. It may have been.

1382

Q. What is your best recollection as to those rates? A. The only thing which I may say for sure is that it was according to this circular higher than \$24.

Q. I show you a circular headed "Hamburg-Amerika Line," without date, and advertising a sailing of steamers for Hamburg, January 15th, 1910, at 9 A. M., and ask you whether those were the regular rates for the Graf Waldersee on those dates? A. Apparently, yes.

Q. Were they? A. Apparently.

Q. You know they were, don't you? A. How will I know? I am not connected with the Hamburg Amerika Line.

1383

Q. Wasn't \$35 about the regular rate? A. That may have been, yes; otherwise this circular would not state it.

Mr. Burlingham: The rates are different for different steamers.

Mr. Guiler: I offer that circular in evidence. Marked Petitioner's Exhibit No. 85.

Mr. Dorr: Is there any objection to the admission of the circulars which have been offered in evidence on the ground that the authenticity has not been sufficiently proved? Let

1384

*Anne C. H. Nyland*

me put it in this way: Is there any objection to the admission of these circulars on the ground that they are not genuine circulars issued by the Hamburg-Amerika Line as advertisements to induce the purchase of steerage transportation by the steamer Graf Waldersee?

Mr. Spooner: You only put us to the trouble of proving that it is incorrect, but we take that; we do not object to the form of it or the authenticity of it.

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Mr. Dorr: May it appear on the record that the Government Exhibit No. 85 is a copy of a circular advertising the rates of the steamer Graf Waldersee, under date of January 15th, 1910, issued by the Hamburg-Amerika Line—

Mr. Spooner: It is admitted that it is a circular printed by the Hamburg-Amerika Line and issued to agents.

Mr. Dorr: For their information in dealing with the public?

Mr. Spooner: Issued to the agents.

1386

Mr. Dorr: Is it admitted that Exhibit No. 84 is a circular of the Hamburg-Amerika Line issued by that line to its agents in regard to a certain sailing of the steamship Graf Waldersee and the steerage rates of that steamer on that sailing?

Mr. Spooner: Yes.

Q. Did your committee at any time direct or suggest that the President Lincoln of the Hamburg-Amerika Line should sail against the Northwest Transport Line's steamer Neapolitan Prince? A. I don't remember.

Q. Don't you remember that the President Lincoln did sail at the same time against a steamer of the



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Northwest Transport Company? A. It is possible, but I don't remember. What date was it?

Q. I show you this paper dated January 24th, 1910, headed "Hamburg-Amerika Line," and the sailing of the President Lincoln, and ask you whether that refreshes your recollection, and ask you whether the President Lincoln sailed on the date mentioned on that paper? A. Very likely, sir.

Q. Can't you say that it did sail on that date? A. No, sir; I don't remember; it is over three years ago.

Q. Does that refresh your memory as to whether you at any time permitted the President Lincoln to sail against the Northwest Transport Line? A. It is possible, but I do not recollect.

1388

Q. It is possible? A. It is possible.

Mr. Guiler: Do you concede, Senator, the correctness of that exhibit?

Mr. Spooner: We concede the correctness of this circular dated January 24th, 1910, the \$22 rate circular.

Marked Petitioner's Exhibit No. 86.

Mr. Guiler: Is it conceded that the circular marked Hamburg-Amerika Line, without date, for the sailing of the President Lincoln, on January 29th, 1910, at 9 A. M. is correct so far as the statements therein are contained?

1389

Mr. Spooner: It is not conceded that it is correct with reference to the steerage rate.

Mr. Guiler: It is conceded that it has been issued by the Hamburg-Amerika Line to its agents.

Mr. Spooner: We deny that it correctly gives the rate for steerage passage.

Marked Petitioner's Exhibit No. 87.

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Mr. Dorr: The Government offers in evidence as Exhibit No. 88, what purports to be a circular of the Red Star Line, New York-Antwerp service, under date of January 18th, 1910, advertising the sailing of the steamer Lapland.

Marked Petitioner's Exhibit No. 88.

Adjourned to Tuesday, June 25th, 1912, at 10:00 A. M.

1391

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,  
Petitioner,  
against

HAMBURG-AMERIKANISCHE PACK-  
ETFAHRT - ACTIEN - GESELL-  
SCHAFT, and Others,  
Defendants.

Before, Charles  
Elliott Pickett,  
Esq., Examiner.

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New York, June 25th, 1912.

Hearing resumed pursuant to adjournment.

Appearances:

Henry A. Wise, Esq., Goldthwaite H. Dorr, Esq.,  
Henry A. Guiler, Esq., John S. Bradley, Esq., for the  
Petitioner.

Messrs. Burlingham, Montgomery & Beecher, by  
Charles C. Burlingham, Esq., and Norman B. Beecher,  
Esq., for the Anchor Line, Ltd., *et al.*

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Messrs. Choate & Larocque, by Nelson Shipman, Esq., for Norddeutscher Lloyd, *et al.*

Messrs. Spooner & Cotton, by L. C. Spooner, Esq., for The Allan Line, *et al.*

Messrs. Lord, Day & Lord, by Lucius H. Beers, Esq., and Allan B. A. Bradley, Esq., for the Cunard Line, *et al.*

Ralph J. M. Bullowa, Esq., personally, and Walter Rogers Deuel, Esq., for Russian East Asiatic Company, *et al.*

ANNE C. H. NYLAND, recalled:

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*Direct-examination continued by Mr. Guiler:*

Q. Mr. Nyland, I ask you to look again at the letter from the Holland-Amerika Line to the Holland-Amerika Line, Rotterdam, dated May 28th, 1908, and ask you to state whose signature, or whose initial, that is signed to that letter on the left-hand side of the last page thereof? A. It is apparently my initial.

Q. That is your initial? A. Apparently, yes.

Q. Did you dictate that letter and then subsequently give it to Mr. Gips to sign, or have it sent to him in any way? A. Can I read the letter?

Q. Yes, certainly (handing witness letter).

1395

Mr. Spooner: A typewritten letter?

Mr. Guiler: Yes, one of the letters that has been offered in evidence already.

A. Yes.

Q. Who was it, Mr. Nyland, that appointed the committee of three to take up the matter of fighting steamers? A. To the best of my recollection the managers of the steamship lines.

Q. I call your attention to a part of the letter in regard to the opposition steamer being appointed by the managers or the members of the North Atlantic

1396

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and Continental Conferences, does that refresh your recollection in any way as to whether it was the American Atlantic Conference that appointed the small committee, remembering that you dictated that letter? A. You refer to the second cable which is here?

Q. Yes? A. That was a cable sent from Europe.

Q. But does it not state, and don't you remember, that members of the American Atlantic Conference had a meeting, say of the general managers and appointed this committee of three, including yourself, of which you were one? A. It is stated here.

1397

Q. I am trying to get your recollection; I am asking you was not that committee appointed at a meeting of the North Atlantic and Continental Conferences here in New York, or in the United States? A. To the best of my recollection this committee was appointed at the meeting held in consequence of these cables.

Q. In New York? A. In New York.

Q. By the American Atlantic Conference?

Mr. Spooner: Why do you lead the witness asking him by whom?

Mr. Guiler: I think he can answer that. I am asking him what he remembers with that letter in front of him.

1398

Mr. Spencer: Ask him by whom.

Q. I will ask you by whom was this small committee appointed? A. The small committee was appointed at said meeting held in consequence of this cable.

Q. By whom? A. It is stated here by the general managers and passenger agents of the different lines.

Q. Yes, but isn't it stated in that letter that it was appointed by a majority of the members of the North Atlantic Conference and Continental Conference over on the first page, which I showed you before? A. This

cable was the cause of this meeting and at said meeting the appointment was made.

Q. And the meeting was a meeting of the North Atlantic Conference, was it not? A. Not of the North Atlantic Conference.

Q. North Atlantic and Continental Conferences? A. The members of the said conferences were both represented.

Q. They were both represented? A. Very likely represented.

Q. Do you know whether they were represented or not? A. No, sir; I don't remember the details of that meeting.

1400

Q. What do you understand by the American Atlantic Conference; the New York, the American Atlantic Conference mentioned in that letter? A. A conference held by the Continental lines and by the British lines.

Q. By representatives of them, is that right? A. Yes.

Q. And representatives of the American Atlantic Conference were also members of the Continental Conference, were they not? A. Not all, no, sir.

Q. Not all, but some of them? A. Some of them.

Q. In the majority of cases they were, weren't they, the same persons composing the North Atlantic and the Continental Conferences? A. No, sir.

1401

Q. The American Atlantic and Continental Conferences? A. Not at all; it may be in some cases.

Q. You were selected as a member of that small committee, were you not, at that meeting which is mentioned there? A. Yes.

Q. And took up your duties as such member of that committee, did you not? A. Yes.

Q. Now, according to the letter which I have shown you, did you proceed to take up the matter of regulating the agents which was mentioned in that let-

1402

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ter, according to instructions in the cable; I will show you further on in the letter where the agency matter is taken up; now, did you proceed to take that up, for instance, the Zotti case? A. In what way do you mean, sir?

Q. I say, it was part of your duties as a member of that conference and as a member of that committee to take up the matter of the discipline of agents, was it not?

Mr. Beers: We object to that as leading. Do you press the question in that form?

1403

Mr. Guiler: Yes, I think I do. I think it has been clearly shown in this matter the witness is identified with and he has had a number of things to do with the matters charged in this bill, and he is fully identified with them and at our last meeting here showed that he was an adverse witness, a hostile witness, and therefore I should think and I insist that we are allowed to cross-examine this witness if we so desire, and to ask the witness leading questions.

1404

Mr. Bullowa: I object on the ground that it is not within the pleadings and he is not a hostile witness to us, because there is no charge in the complaint that at that time we were a member of any conference.

Mr. Guiler: I can simplify this matter by having a general objection to these questions put down.

Mr. Beers: I understand all of this testimony is taken subject to the stipulation which was entered into at an earlier hearing, but that stipulation did not extend to the form of questions?

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1405

Mr. Bullowa: I don't see how we can possibly waive objections to the form of the question.

Mr. Guiler: Put your objections on the record and have them apply to these questions as leading.

Mr. Bullowa: We must object to every question so as to give the Government an opportunity to correct its questions.

Mr. Spooner: I want to suggest that the presumption is that a witness who takes an oath to tell the truth is an honest witness, and whether he is an unwilling witness or not his answers are put on the record.

1406

Mr. Guiler: Where he is in substantially the position of a defendant and has been called upon to testify. This witness has shown his unwillingness and we are entitled to ask him leading questions or cross-examine him if we should so wish.

Q. (Question read.) A. Not especially so.

Q. But it was your duty to do so, was it not; to a certain extent? A. Not as a member of that committee.

Q. As a member of the conference? A. Of the conference, that is a different matter.

1407

Q. The committee was especially appointed to take up the matter of fighting steamers, was it not, or opposition steamers? A. That was the object.

Mr. Spooner: He put you in the attitude of saying that was done by the conference, did you say that?

The Witness: No.

Q. And the committee proceeded to take up its duties in regard to these fighting steamers, did it not?

A. Yes, sir.

1408

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Q. I show you part of this—I ask you what lines particularly were the fighting steamers directed against?

Mr. Burlingham: When?

Mr. Guiler: In 1908.

Mr. Burlingham: He answered that the other day; but go on, Mr. Nyland.

The Witness: I have testified to that before.

Q. I ask you to answer my question? A. Against the Russian East Asiatic, the Russian Volunteer and the New York and Continental lines.

1409

Q. How about the Uranium Line? A. The Uranium Line is another name for the New York and Continental Line.

Q. But it was in the same position as regards the small committee as the other lines which you have mentioned, was it not?

Mr. Bradley: He says it is the same line with another name.

Q. Were the New York Continental and the Uranium running at the same time? A. No, sir.

Q. One succeeded the other, did it not? A. The Uranium did not succeed the New York and Continental Line.

1410

Q. It came later on in matter of time, did it not, than the New York and Continental Line? A. To the best of my recollection the New York and Continental Line was succeeded by the Northwest Transport Line and the Northwest Transport Line was succeeded by the Uranium Line.

Q. But your duties as a member of the committee applied to all those lines, did it not? A. At what particular time?

Q. I say your duties during, we will say, 1908 and 1909, or thereabout, applied to all the lines which



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you have mentioned? A. Only three lines I have mentioned.

Q. They did not apply to the Uranium Line? A. They did not exist at that time to the best of my recollection.

Q. But you were a member of the committee when the competition was directed against the Uranium Line, were you not? A. Can you give me the date? I may know then.

Q. I ask you if you recollect whether or not as a member of the committee you directed or suggested competition against the Uranium Line at any time—the Uranium Line, I understand, lasted only a few years? A. I believe I was a member of the committee.

1412

Q. Now, the rates which were to be charged by the competing steamers suggested by the small committee were to be the same or less, were they not, than the rates charged by the competing steamers? A. What do you call a competing steamer? The steamers of the Atlantic—

Q. I will say the fighting steamers? A. The steamers appointed by the small committee?

Q. Yes. (Question read.)

Mr. Beers: Objected to as leading.

1413

A. The rates quoted by the so-called fighting steamers were never less.

Q. Were never less than those of the Northwest Transport Company or other competing lines? A. Never less.

Q. They could be less, could they not? A. But they were not.

Q. You had authority to make them less, did you not? A. They were not.

Q. I say you had authority to make them less if you so desired, as a member of that small committee?

A. I don't believe that our authority went that far.

1414

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Q. I say, did you have authority to make them—

Mr. Burlingham: He has answered.

A. I don't believe that our authority went that far.

Q. Will you kindly look at that letter dated May 28th, 1908, Petitioner's Exhibit No. 27, and I ask you whether the cable which you received from Mr. Peters states that you could charge less, the same or less than the rates which the Northwest Transport Company or the other competing lines charged?

1415

Mr. Burlingham: Objected to as assuming that he received a cablegram from Peters, because he did not, and upon the further ground that the letter speaks for itself; he cannot be asked what it means, or what it states.

Q. Received by the Holland-America Line.

Mr. Burlingham: I don't think they received it. There is nothing to show they received it.

Mr. Guiler: There is this letter to show; the cable is copied into the letter which he dictated.

1416

Q. I ask you to look at that and tell me whether you could charge less or the same rates which the competing steamers or opposition steamers could charge? A. We followed the instructions from our home office and not from Mr. Peters.

Q. I ask you if this refreshes your recollection in regard to whether you were allowed to charge more or less, or rather less, than the competing steamers; this quotation from the letter which you have stated you dictated (reading); do you not recollect that you could charge the same or a lower rate than the outside lines? A. I call your attention, sir, to the beginning of this letter. I have answered your ques-

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1417

tion. We obey the instructions from the home office; that is not an instruction from the home office.

Q. That was an instruction from Mr. Peters, was it not? A. Mr. Peters could not give us any instructions.

Q. I say this is a cable from Mr. Peters which you have quoted here? A. Yes.

Q. And you have advised me already that you followed the instructions in that cable, did you not?

A. I said we followed the instructions where the meeting is concerned resulting from said cable.

Q. That cable shows you, does it not, that you had authority to charge less than the rates charged by the competing steamers? A. This cable, that is only a repetition of a cable received from Peters.

1419

Q. I ask you cannot you answer that question (question read)? A. What Mr. Peters had authority to give us—

Q. Cannot you answer that question? A. That is the answer, sir; that is the point to be decided, whether Peters could give instructions to us.

Q. I asked you whether you had authority or not to do so on that cable from Peters? A. Who is Mr. Peters?

Q. I ask you who Peters is? A. According to my recollection, or from hearsay, I understand Mr. Peters to be a secretary in Europe.

1419

Q. Secretary of what in Europe? A. Of the N. D. L. V. and as such he has no authority to instruct us or any line in America.

Q. The N. D. L. V. is composed of the Hamburg-American Line and the Holland-Amerika Line and the Red Star Line and the North German Lloyd, is it not? A. Yes.

Q. And your lines was a member of the N. D. L. V., was it not? A. According to information, yes.

1420

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Q. And therefore, Peters had authority to instruct you, had he not? A. No, sir.

Mr. Spooner: That is objected to.

Mr. Beers: That is objected to as cross-examination.

Mr. Bullock: That is objected to.

Q. As secretary of the N. D. L. V.?

1421

Mr. Burlingham: I object further on the ground that there is nothing in the proof to show that Mr. Peters ever telegraphed or cabled to the Holland-America Line, and the letter to which counsel refers contains no such statement. It does not say any cablegram was received by the Holland-America Line from Peters. Probably it was received by the Holland-America Line, probably it was not, and probably it was received by the conference.

Q. You had that cablegram in your possession at the time you wrote that letter, did you not? A. No, sir.

Q. Or a copy of that cablegram? A. It may have been a copy.

1422

Q. And you dictated from that copy, did you not? A. Very likely.

Q. And you were in the employ of the Holland-America Line at that time? A. Yes.

Q. Now, again I will ask you whether or not you had the right to charge lower rates than the competing lines?

Mr. Burlingham: Objected to on the ground that the witness has twice answered that he did not; that he took his orders from the Holland-America Line, the home office.

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1323

Mr. Guiler: He has not answered that question yet, and I would like to have an answer from him.

Mr. Burlingham: Read the question and let the witness answer for the third time.

Q. (Question read.) A. I can't answer the question the way you put it, because it is impossible to answer this question.

Q. I want an answer to that question, and I think it can be answered? A. I don't think I can answer the question the way you put the question.

Mr. Spooner: He has stated that the only authority the different lines recognize was a cablegram from the home office. He says they did not recognize Mr. Peters; he has said that repeatedly and that is an answer to your question.

1424

Mr. Guiler: I don't think it is an answer; he has not answered my question yet, although I have asked it three times.

Mr. Spooner: Try it again.

Q. Did you have authority from any source to put in the same rate as the competing steamers? A. That is the same question, sir, which I cannot answer in the way you ask it.

1425

Q. I think you can answer it.

Mr. Spooner: That is not the same question. He says did you have authority to make the rates the same as the competing steamers, from any source.

A. We had authority from the general managers of the lines here to form a small committee and to suggest steamers and rates.

Q. And you did suggest steamers and rates, didn't you? A. Yes.

1426

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Q. Do you remember any time when you ever suggested a less rate than the rate of the competing line?

A. No, sir, never.

Q. Did you ever suggest such a rate, or was ever such a rate adopted by any of the lines pursuant to your suggestion? A. Not to my recollection.

Q. You are absolutely sure of that, are you, that you never suggested a lower rate or a lower rate was never adopted by you? A. I was not always a member of that committee.

Q. Or by that committee? A. I don't know.

1427

Mr. Burlingham: He says he was not always a member of that committee.

Q. Then you cannot say from your own knowledge whether a less rate was suggested or was not than those of the competing steamers? A. I know by my own knowledge that no lower rate was ever suggested.

Q. I here show you the rate of the President Lincoln, or rather, show you a circular issued by the Hamburg-American Line, under date of January 24th, 1910, where it appears—which has already been put in evidence—where it appears that a rate of \$22, less \$2 commission are suggested (referring to Exhibit No. 86)? A. Yes.

1428

Mr. Burlingham: Against what steamer was that?

Mr. Guiler: The President Lincoln against the Neapolitan Prince, sailing January 29th, 1910.

Q. That rate mentioned in that circular was suggested by the small committee, was it not? A. Possibly.

Q. And the rate for the President Grant sailing on February 5th, 1910, of \$22, less \$2 commission, the circular being dated January 31st, 1910, was suggested

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1429

by your committee or some member thereof, was it not? A. Apparently, yes.

Circular marked Petitioner's Exhibit No. 89.

Circular regarding steamer President Grant marked Petitioner's Exhibit No. 90.

Mr. Burlingham: What steamer was that against?

Mr. Guiler: That was against the Sicilian Prince.

Mr. Burlingham: What was the steamer selected?

Mr. Guiler: The President Grant.

1430

Q. Now, Mr. Nyland, did you in the course of your duties ever aid, any more than suggest, that these steamships be chosen as fighting ships; did you ever select any of them? A. We suggested steamers.

Q. Did you not do more than suggest; did you not select at times the various steamers? A. As long as I was a member of this committee I suggested only.

Q. You are sure that under no circumstances you selected a fighting steamer?

Mr. Spooner: Do you mean to draw his attention to the selecting of a particular ship or directing of a particular ship?

Mr. Guiler: Yes, he made the distinction.

Mr. Spooner: I don't know that he does.

Mr. Burlingham: Select is the word you are emphasizing now?

Mr. Guiler: Yes.

1431

A. I never selected a steamer as a member of that committee.

Q. Did your committee select a steamer while you were a member of it? A. Not to my recollection.

Q. I show you a letter dated June 5th, 1908, and ask you whether the initial N at the end of that let-

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ter of June 5th, 1908, from the Holland-Amerika Line, New York, to the Holland-Amerika Line, Rotterdam, is your initial, and whether you wrote that N upon that letter? A. Apparently, yes.

Q. And that letter was dictated by you, was it not? A. Possibly, yes.

Q. The letter was dictated by you when your initial N appears on it? A. No, not necessarily.

Q. It was read over by you before being sent out? A. It was read over, yes.

1433

Mr. Guiler: I offer that letter in evidence.

Mr. Beers: Objected to as incompetent and immaterial.

Received as Exhibit No. 91.

Q. Now, looking at that letter, Mr. Nyland, it appears in that letter that you selected the steamer Nieuw Amsterdam, as a fighting steamer, against the Petersburg; does that refresh your recollection as to whether you selected the Nieuw Amsterdam to run against the Petersburg, or whether you merely suggested it? A. Apparently the Nieuw Amsterdam was suggested and became a fighting steamer.

Q. I say it was selected, was it not, according to this letter?

1434

Mr. Burlingham: By whom?

Mr. Guiler: By the committee.

Q. Now, I show you letter dated June 9th, 1908, and ask you—letter from the Holland-Amerika Line to the Holland-Amerika Line, Amsterdam—whether the initial N on that letter, appearing at the bottom of that letter, was written by you? A. Apparently, yes.

Q. And that letter was dictated by you, was it not? A. Apparently.



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1435

Mr. Guiler: I offer the letter of June 9th, 1908, in evidence.

Mr. Beers: Same objection.

Marked Petitioner's Exhibit No. 92.

Q. In this letter you state that the Finland of the Red Star Line carried 1,305 passengers last week against 321 on the *Volturmo*; now, I ask you whether when a fighting steamer was selected if there was any excess passengers on the so-called fighting steamer they were transferred to the steamer which was sailing nearest that date on your own or other lines in the conference?  
A. To the best of my recollection, yes.

1436

Q. And so the other lines which carried those passengers were allowed a certain compensating rate, were they not, by the conference for carrying those passengers? A. Not to my personal knowledge.

Q. But at this particular time, according to this letter; I ask you to look at the letter, the second paragraph thereof, and ask you whether that refreshes your recollection as to the reason for transferring those passengers to the *Oceanic* rather than to some other line in the conference? A. The Red Star Line can answer that question.

Q. You wrote the letter, did you not? A. It simply states—

1437

Q. What is stated in there is correct, is it not, as you wrote it? A. Very likely, yes.

Q. Can you tell me what is meant by the statement according to the pool figures—what is meant by the words "pool figures"? A. I presume that stands for the numbers carried.

Q. Numbers carried by the vessels, members of the conference? A. Partly.

Q. What does it mean if it does not mean carried by the members of the conference?

1438

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Mr. Spooner: That is cross-examination, which is objectionable, I think.

A. We never had a pool in the conference.

Q. I ask you whether the words "pool figures" do not refer to the conference figures? A. What do you call conference figures?

Q. I am asking you; you are not asking me; you may get your turn later on? A. I do not understand that expression, sir.

1439

Q. You wrote that expression without understanding what it meant, did you; I ask you if you wrote those words according to the pool figures—

Q. I must have been informed that the English lines had carried less passengers than they should have done.

Q. The English lines were—what English lines? A. Did I not mention them there?

Q. I show you the letter (handing witness letter)? A. No, the English lines is a general expression.

Q. What English lines; don't you know what they were or don't you know what you were writing about here when you wrote the letter? A. The English lines that run from England to New York or to America may have been carrying less passengers than they should.

1440

Q. What English lines were you talking about when you wrote the letter? A. The lines between England and America.

Q. You meant the English lines in the pool, don't you? A. Very likely I meant that, yes.

Q. Now, those English lines which were in the pool, were the English lines which were in the conference, were they not?

Mr. Bullowa: What conference?

Mr. Guiler: Any conference.

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1441

A. Yes.

Q. Were there regular pool figures made up, pool reports of figures made to your line in New York?

A. That may have been, I don't know.

Q. You had the pool figures in your possession at the time you wrote this letter, did you not? A. It may have been.

Q. You say according to the pool figures; what do you mean by that? A. I may have been informed of the pool figures.

Q. What informed you of them at that particular time that you were writing? A. Will you please explain that question; I don't understand it; what informed me?

1442

Q. What or who informed you in regard to the pool figures at the time you were writing; whether you had a paper before you or whether you were told by some one else? A. I don't remember.

Q. But, at any rate, you got the pool figures in some way or other at that time? A. I may have been informed about the pool figures.

Q. Was there not a periodic report sent into your office in regard to whether the various pool lines had the quota or not of passengers which they had to carry? A. I don't know about that.

Q. You don't know? A. Whether a periodical report was sent to me.

1443

Q. To the Holland-Amerika Line? A. I couldn't answer that question, sir.

Q. Would you yourself ever receive the periodic report of the standing of the various lines in the pool? A. I may have seen such a report from time to time.

Mr. Burlingham: We will admit it was received by the line, but by the witness is a different thing; he is not the Holland-Amerika Line or the head of it.

1444

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Mr. Guiler: He is a good part of it.

Mr. Crim: Do you admit the Holland-Amerika Line receives its quota under or over?

Mr. Burlingham: I think I can admit that; I will ask the head down there and find out and let you know.

Q. You say you did receive accounts, didn't you, periodically? A. I may have been informed about the pool figures.

1445

Q. And as a general rule you had them at hand in your possession, did you not, where you could refer to them? A. No.

Q. At any rate, occasionally these pool figures were sent to you, were they not? A. Not to me; I may have had them occasionally, but they were never sent to me; never.

Q. You had them occasionally? A. Occasionally I may have had some of these figures, yes.

1446

Q. In this particular letter that I show you you refer to the fact that the Russian Volunteer Fleet would discontinue the sailings of their vessel for some time; you were interested in whether the Russian Volunteer Line discontinued or not, were you? A. Yes, as far as I can be interested in it, as passenger agent of the line.

Q. And your line was interested in it, wasn't it? A. Maybe.

Q. In as much as it was a competing line of your line and you kept track of it, did you not, as to whether it was running or whether it was not running? A. Yes.

Q. Now, I show you letter dated June 12th, 1908, and ask you whether the initial N on there was signed by you and the letter dictated by you in the ordinary way; that is from the Holland-Amerika Line, New York, to the Holland-Amerika Line, Rotterdam?

A. Apparently, yes.

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Mr. Guiler: I offer this in evidence.

Mr. Beers: I renew the objection to these Holland-Amerika letters—they are incompetent and irrelevant and not binding on the other defendants.

Marked Petitioner's Exhibit No. 93.

Q. You were a member of the committee which selected the Noordam therein mentioned? A. I do not know, sir.

Q. But the committee, as you knew—or does this refresh your recollection as to whether the Noordam was selected to sail against the Rossia at that particular time? A. According to the letter, yes.

1448

Q. Do you remember whether it was or not? A. No, sir, I do not.

Q. Do you recollect whether you had anything to do with fixing the rate of \$22 upon that particular sailing? A. If I was a member of the committee I very likely had something to do with it.

Q. You wrote the letter, didn't you? A. But it does not say that I made that rate.

Q. I say you wrote the letter? A. Yes.

Q. And you had the information at that time, had you not, that that was the rate fixed? A. Yes.

Mr. Guiler: I also offer letter dated June 23rd, 1908, Rotterdam, Holland-Amerika Line, to the Holland-Amerika Line, which is in reply to the letter which I have already offered in regard to the sailing of these steamers.

1449

Mr. Beers: Can it not be understood that these letters are all received over one objection?

Mr. Guiler: Yes; I have a number of them to offer; it will save time if the objection apply to all.

Marked Petitioner's Exhibit No. 94.

1450

*Anne C. H. Nyland*

Q. Does this letter from the Holland-Amerika Line, New York, dated June 26th, 1906, to the Holland-Amerika Line, Rotterdam, refresh your recollection as to whether or not the Noordam was selected by the small committee as a fighting steamer against the Russia? A. Yes, this steamer has been selected as a fighting ship.

Q. And in the same letter that the Friederich Wilhelm was also selected as a fighting steamer against the Russia? A. Apparently, yes.

1451

Mr. Guiler: I offer the letter in evidence.

Marked Petitioner's Exhibit No. 95.

In order to simplify matters I will go through these and give the dates of them.

I offer in evidence letterpress copy dated July 17th, 1908.

Marked Petitioner's Exhibit No. 96.

I offer in evidence letterpress copy dated July 20th, 1908.

Marked Petitioner's Exhibit No. 97.

I offer in evidence letterpress copy dated July 24th, 1908.

Marked Petitioner's Exhibit No. 98.

I offer in evidence letterpress copy dated August 18th, 1908.

1452

Marked Petitioner's Exhibit No. 99.

I offer in evidence letter dated July 29th, 1908, original letter from the Holland-Amerika Line, Rotterdam, to the Holland-Amerika Line, New York.

Marked Petitioner's Exhibit No. 100.

I offer in evidence letterpress copy dated August 21st, 1908.

Marked Petitioner's Exhibit No. 101.

I offer in evidence letterpress copy dated September 4th, 1908.

- Marked Petitioner's Exhibit No. 102. 1453  
 I offer in evidence letterpress copy dated  
 October 16th, 1908.
- Marked Petitioner's Exhibit No. 103.  
 I offer in evidence letterpress copy dated  
 March 29th, 1909.
- Marked Petitioner's Exhibit No. 104.  
 I offer in evidence letterpress copy dated  
 March 16th, 1909.
- Marked Petitioner's Exhibit No. 105.  
 I offer in evidence letterpress copy dated  
 April 16th, 1909.
- Marked Petitioner's Exhibit No. 106.  
 I offer in evidence letterpress copy dated 1454  
 April 27th, 1909.
- Marked Petitioner's Exhibit No. 107.  
 I offer in evidence letter dated April 26th,  
 1909.
- Marked Petitioner's Exhibit No. 108.  
 I offer in evidence letterpress copy dated  
 May 14th, 1909.
- Marked Petitioner's Exhibit No. 109.  
 I offer in evidence letterpress copy dated  
 November 12th, 1901.
- Marked Petitioner's Exhibit No. 110.  
 I offer in evidence letterpress copy dated  
 May 20th, 1909.
- Marked Petitioner's Exhibit No. 111. 1455  
 I offer in evidence letterpress copy dated  
 May 24th, 1909.
- Marked Petitioner's Exhibit No. 112.  
 I offer in evidence letterpress copy dated  
 June 4th, 1909.
- Marked Petitioner's Exhibit No. 113.  
 I offer in evidence letterpress copy dated  
 June 11th, 1909.
- Marked Petitioner's Exhibit No. 114.  
 I offer in evidence letterpress copy dated  
 June 18th, 1909.

1456

Marked Petitioner's Exhibit No. 115.

I offer in evidence letterpress copy dated June 25th, 1909.

Marked Petitioner's Exhibit No. 116.

I offer in evidence letterpress copy dated July 9th, 1909.

Marked Petitioner's Exhibit No. 117.

I offer in evidence letterpress copy dated July 23rd, 1909.

Marked Petitioner's Exhibit No. 118.

I offer in evidence letter dated July 20th, 1909.

Marked Petitioners' Exhibit No. 119.

1457

I offer in evidence letterpress copy dated August 3rd, 1909.

Marked Petitioner's Exhibit No. 120.

I offer in evidence letterpress copy dated August 17th, 1909.

Marked Petitioner's Exhibit No. 121.

I offer in evidence letter dated August 25th, 1909.

Marked Petitioner's Exhibit No. 122.

I offer in evidence letterpress copy dated September 23rd, 1909.

Marked Petitioner's Exhibit No. 123.

I offer in evidence letterpress copy dated October 8th, 1909.

1458

Marked Petitioner's Exhibit No. 124.

I offer in evidence letter dated October 6th, 1909.

Marked Petitioner's Exhibit No. 125.

I offer in evidence letterpress copy dated November 5th, 1909.

Marked Petitioner's Exhibit No. 126.

I offer in evidence letter dated October 25th, 1909.

Marked Petitioner's Exhibit No. 127.

I offer in evidence letterpress copy dated June 22nd, 1906.



- Marked Petitioner's Exhibit No. 128. 1459  
 I offer in evidence letterpress copy dated  
 June 30th, 1906.
- Marked Petitioner's Exhibit No. 129.  
 I offer in evidence letter dated July 3rd,  
 1906.
- Marked Petitioner's Exhibit No. 130.  
 I offer in evidence letterpress copy dated  
 July 12th, 1906.
- Marked Petitioner's Exhibit No. 131.  
 I offer in evidence letterpress copy dated  
 July 17th, 1906.
- Marked Petitioner's Exhibit No. 132.  
 I offer in evidence letterpress copy dated 1460  
 November 5th, 1906.
- Marked Petitioner's Exhibit No. 133.  
 I offer in evidence letterpress copy dated  
 May 10th, 1907.
- Marked Petitioner's Exhibit No. 134.  
 I offer in evidence letterpress copy dated  
 June 21st, 1907.
- Marked Petitioner's Exhibit No. 135.  
 I offer in evidence letterpress copy dated  
 September 13th, 1907.
- Marked Petitioner's Exhibit No. 136.  
 I offer in evidence letter dated February  
 22nd, 1908.
- Marked Petitioner's Exhibit No. 137. 1461  
 I offer in evidence letter dated March 23rd,  
 1908.
- Marked Petitioner's Exhibit No. 138.  
 I offer in evidence letter dated March 25th,  
 1908.
- Marked Petitioner's Exhibit No. 139.
- Mr. Dorr: All these letters offered in the  
 letterpress copy books, if there is any question  
 about their authenticity, if you wish to reserve  
 that, I have no objection if you call it specific-  
 ally to our attention. Of course, if there is

1462

*Anne C. H. Nyland*

any serious question about their authenticity and you can satisfy us that it is not genuine, that is a different matter.

Mr. Spooner: They go in under the general objection, subject to stipulation.

Mr. Dorr: Yes, sir; the objection of incompetency in the light of proof of authenticity.

It is understood the objection of incompetency applies to all these letters, Exhibits 93 to 139 inclusive.

1463 By Mr. Guiler:

Q. How were the provisions of Agreement "AA" of February, 1908, carried out, where one line was plus and the other minus in the pool? A. I have no knowledge of that, sir.

Q. You have no knowledge as to whether compensation was made to the lines which were plus or minus in the pool? A. No, sir.

Q. Or whether arrangements for compensation was made by the other line? A. No, sir.

Q. Have you ever talked with anybody in your line in regard to compensation matters? A. I may have done so.

1464 Q. Have you heard the provision for compensating the various lines which were either plus or minus in the pool and had not their proper quota? A. You mean passengers or money?

Mr. Burlingham: Money or passengers?

Q. I will say according to Agreement "AA," or amendments thereto? A. I have no knowledge.

Q. Have you discussed with Mr. Gips, the passenger agent of the line?

Mr. Spooner: That is improper and I object to it.

Q. (Continuing.) The managing agent of the line?

*Anne C. H. Nyland*

1465

Mr. Spooner: That is objected to.

(Mr. Dorr in conversation with one of the defendants.)

Mr. Burlingham: Are you going to try to prove an admission of Gips?

Mr. Dorr: Certainly.

Mr. Burlingham: That is a poor way to do it.

Mr. Dorr: He did not write everything, Mr. Burlingham, he wrote most of the things.

Mr. Guiler: Will you read the question.

Q. (Question read.) A. I may have done so.

1466

Q. Did you do it? A. I know we had a discussion now and then in regard to pool matters.

Q. I am asking in regard to compensation? A. I do not remember the particular subject.

Q. But you do remember that it was discussed, compensation matters at one time?

Mr. Spooner: He didn't say that.

A. It may have been so.

Mr. Guiler: He says it may have been so.

Mr. Spooner: He says so now in answer to your question.

Q. I asked you if you did so? A. About a particular compensation or about a particular time?

1467

Q. Well, I asked you if you did know? A. In a general way I discussed it with Mr. Gips.

Q. And you have discussed the compensation price for particular years, have you not?

Mr. Burlingham: Objected to as leading and not founded on any statement he has made, and as incompetent.

Mr. Guiler: He has not made many statements.

1468

*Anne C. H. Nyland*

A. It may have been, I do not remember.

Q. You know that a certain compensation price was fixed every year, do you not? A. I heard about it; yes, sir.

Q. Well, you know it, do you not? A. No, sir; I don't.

Q. You know it was fixed at one hundred marks some years and one hundred and ten other years?

A. I have no personal knowledge of that matter. I may have been informed but I don't know anything about it.

1469

Q. Did you ever have any conversation with Mr. Gips or with members of the small committee as to the compensation for the various fighting steamers?

Mr. Spooner: I renew my objection. It seems to me this whole line of questions is improper.

A. It may have been so.

Q. Was it not so? A. I presume I had a conversation on that point.

Q. You had a conversation? A. I presume I had a conversation on that point with members of the small committee.

1470

Q. Well, did you have it? A. Can you give me any special date or any time?

Q. I asked you if you had ever had a conversation of that kind? A. I am sorry to say I must answer I do not remember, unless you specify a time or date, or when.

Q. Well, then you don't remember anything about it, is that the idea? A. If you ask the question this way, I am sorry to say I do not remember.

Q. Never mind; I asked you a question as to whether you remember? A. In a general way I had a conversation with members of the small committee on that matter.

*Anne C. H. Nyland*

1471

Q. What was the conversation? A. I do not recollect the details, it is over two years or three years ago.

Q. Were arrangements from time to time made as to compensating the fighting steamers? A. I don't know, sir.

Q. Did you discuss such arrangements with members of the committee? A. I gave you the answer to that question, I may have discussed from time to time with members of the small committee, but to give you details, I cannot.

Q. Your memory reaches back to this, then you did discuss it? A. I have a vague impression I did; yes, sir.

1472

Q. What were the arrangements that you discussed? A. I could not tell you sir.

Q. You do not remember the basis of the arrangement for compensation? A. As I said before I have no personal knowledge on this matter; all I know is only by hearsay.

Q. Who did you hear it from? A. I could not say that; I might have heard from different parties.

Q. What party did you hear it from? A. That is what I don't remember, sir, who told me about this, it may have been Mr. Gips.

Q. Was it not Mr. Gips? A. I couldn't tell you; it may have been somebody else.

1473

Q. Who could it have been? A. One of the other members of the small committee.

Q. One of the other members of the small committee? A. Maybe, I don't know.

Q. Who else? A. I don't know, sir.

Q. Did you hear it from Mr. Sandford, did you discuss it with Mr. Sandford? A. I do not remember having discussed the matter with Mr. Sandford.

Q. Then you cannot mention any one in particular? A. I mentioned Mr. Gips.

491

1474

*Anne C. H. Nyland*

Q. Outside of Mr. Gips, you cannot mention any one with whom you discussed the matter? A. The members of the small committee.

Q. Outside of those four, or rather three? A. There are more than that.

Q. You think there are no more than that? A. No; more than three members of the small committee.

Q. Cannot you recall now any one that you have discussed it with? A. I remember I have discussed it with Mr. Gips.

1475

Q. Then you remember the subject of your conversation with Mr. Gips at that time? A. No, sir.

*CROSS-EXAMINATION by Mr. Burlingham:*

Q. Mr. Nyland, it was in May, 1908, that you were made a member of this committee? A. I presume it was, sir.

Q. Did I understand you correctly to say that it was the managing agent of your line that notified you that you were a member of the committee, or was it some one else? A. I stated that I was appointed at the meeting held by the general managers and passenger agents of the lines, according to my recollection.

1476

Q. How many other members were there of the committee? A. There were three members.

Q. Who were the original members? A. It was Mr. Winter, Mr. Farley and myself.

Q. Mr. Winter of the North German Lloyd? A. Yes.

Q. And Mr. Farley of the International? A. Yes, sir.

Q. And how long did you serve on the committee? A. I think one month.

*Anne C. H. Nyland*

1477

Q. Now, just describe in your own way briefly what they did? A. The committee; you want me to explain?

Q. Yes. A. The committee was appointed for the purpose of doing away with the unfair and demoralized competition, brought about by outside lines, and in order to do away with the injury done as far as possible, they selected or rather suggested the steamer to run on or about the same date as the other steamer and made such a rate for such steamer as to be able to accomplish the purpose.

Q. To whom did the committee suggest the particular steamer? A. To the men who owned that steamer.

1478

Q. For instance, if the President Lincoln was suggested or selected by the committee, who was notified of that fact? A. Hamburg-American Line.

Q. Who suggested the rate? A. Those three members fixed and then came to a conclusion that a certain rate would be justified.

Q. Was the sailing date of the selected steamer changed? A. Never

Q. Was the rate suggested ever less than the rate of the outside steamer? A. No, sir.

Q. Now what do you base that statement on; you say so with great positiveness?

1479

Mr. Dorr: I assume he bases it on his knowledge.

Q. Is it based on your knowledge? A. Yes, sir.

Q. There were a large number of agents, were there not, of the line? A. Yes, sir.

Q. And circulars were issued to each of these agents, were they? A. You mean by our company?

Q. Yes? A. Yes, sir.

Q. And were those confidential circulars or a matter of common knowledge? A. Confidential for agents; they were not meant for the general public.

1480

*Anne C. H. Nyland*

Q. And I notice in some of those offered in evidence by the District Attorney the other day, that the rate was stated and the commission was stated? A. Yes, sir.

Q. Was that usual? A. Yes.

Q. What was the commission? A. Two dollars.

Q. Was it ever more? A. Never more; no, sir.

Q. You are quite sure of that? A. Yes, sir.

Q. So that if the rate was fixed at \$25 and the commission was \$2, the public paid \$25 and the agent took \$2? A. Yes, sir.

1481

Mr. Dorr: I object to that unless the witness was present at the various sales to the public. No objection to his testifying what the different rates to the public were. I move to strike the answer out as not responsive.

Q. Do you know what the commissions of the North West Transport Line were? A. Yes, sir.

Q. What were they? A. Any amount up to \$4 or \$5.

1482

Mr. Dorr: I would like to object and ask the Court to cross-examine the witness as to his knowledge of the commissions paid by a line with which he was not an officer or an employee. Please note that the United States Attorney was not permitted preliminary cross-examination to test the witness's knowledge before he was asked the question.

Mr. Burlingham: Is he your witness or not?

Mr. Dorr: He is a hostile witness.

Mr. Burlingham: For the reason I am asking the source of his knowledge now.

Q. How do you know that the commissions ran up to four and five dollars? A. An agent, an employee of the line told me.



*Anne C. H. Nyland*

1483

Mr. Dorr: I ask that that be stricken out as absolutely hearsay.

Q. Have you any other source of knowledge than what was told you?

Mr. Dorr: Does the defendant consent that that be stricken out.

Mr. Burlingham: No, not at all.

Q. Have you any other source of knowledge than what was told you by the agent? A. In regard to commissions or rates?

Q. Commissions allowed? A. I heard it from a man in the steamship business, passenger agent business. 1484

Q. Well, have you ever seen the advertised rates of the North West Transport Line, for instance on the east side, in the agencies? A. Yes, sir.

Q. Many times or infrequently? A. Whenever I passed through that section of the city.

Q. Where have you seen them? A. On Essex Street, Rivington Street.

Q. In the offices or outside? A. In show windows.

Q. Printed or blackboards? A. Sometimes written, mostly written.

Q. Well, now, have you compared them with their circulars? A. Yes, sir. 1485

Q. How do they compare with the circulars? A. Invariably lower.

Mr. Dorr: Objection; if you desire to press this question as to the witness's observation of written documents, the written documents not being offered in evidence. Do you insist on asking that question?

Mr. Burlingham: You have done it for four days. Make a motion to strike it out.

Mr. Dorr: I have made my objection. Make my objection in detail. The Government objects on the ground that the question calls for the statement of the witness as to the contents of statements, written statements which are not produced, and it is not only not the best evidence, but also calls for hearsay.

Q. If I understand you correctly, Mr. Nyland, walking through the East Side—Essex Street and other streets there—you have seen public rates on the North West Transport Line, have you? A. Yes, sir.

1487 Q. And these have sometimes been printed and sometimes written; have any of them been on blackboards? A. They might have been on blackboards; I am not sure about that.

Q. And you have compared those with the circulars which they have issued? A. Yes, sir.

Q. You have frequently seen those circulars, have you? A. Yes, sir.

Q. And do I understand you to say that the rates published and shown in the windows were less than those published and printed on their circulars? A. Yes, sir.

1488 Q. Look at that that I show you now (handing document to witness); is that the sort of circular issued by the North West Transport to their agents? A. I have seen some of their circulars; yes, sir.

Mr. Burlingham: May we offer that, marked for identification?

Mr. Dorr: If this witness is prepared to testify that this is a circular of his own knowledge, I have no objection to his doing so.

Mr. Burlingham: I have not gone so far; mark it for identification; he says he has seen similar ones.

Marked Defendants' Exhibit 1 for identification.

Mr. Guiler: I don't think you ought to offer this that way; those are our papers.

Mr. Bullowa: They were attached to an exhibit in the case.

Mr. Dorr: I do not think it should be done without asking our permission.

Q. Is it with documents like this marked for identification one that you have made the comparison that you have just described? A. Yes, sir.

Q. Did the small committee of which you were a member have anything to do with the discipline of agents or anything of that sort? A. Not particularly, no, sir.

1490

Q. Was there any committee on that subject? A. There was a special committee several years ago on that matter, to deal with all agency questions.

Q. Were you a member of that committee? A. Yes, sir.

Q. How long back have you had a rule that agents for the Conference Lines should not be agents for outside lines? A. I think that rule has existed as long as the conference existed.

Q. Does it go back of 1892, do you think? A. Maybe, yes, sir.

1491

Q. How long have you been here? A. With our company since 1897.

Q. Here in New York how long? A. In New York three years, four years in Chicago.

Q. Now while you were a member of that committee on agencies and agency questions, did you have occasion at times to discipline agents for violating your rules? A. Yes, sir.

Q. What was the necessity of that discipline? A. In order to keep proper control of agents and in order to properly conduct our own business.

*Anne C. H. Nyland*

1492

Q. What was the difficulty with regard to agents; explain it in your own way? A. We asked our agents to maintain rates, in order not to discriminate against the public; that one should not pay more and the other less for the same vessel. Agents sometimes in order to make a sale would cut the commission and as soon as that was found out, the agents were disciplined.

Q. You mean they would give the passenger the benefit of the commission? A. Yes, sir; or part of it.

Q. And that system has been in vogue a great many years, has it? A. Yes, sir.

1493

Q. Do you regard it as important to the proper conduct of the business? A. Yes, sir.

Mr. Dorr: I object to the witness answering questions until counsel has had an opportunity to object. I object on the ground that Mr. Nyland's opinion on the matter is entirely irrelevant and immaterial.

Mr. Burlingham: Will you read the question again, please.

Q. (Question read.) A. Absolutely necessary, sir.

Q. You may state your reasons for that opinion?

1494

Mr. Dorr: Objected to on the same ground. Mr. Nyland's opinion is entirely irrelevant and immaterial.

A. In the first place for the protection of our agency system, necessary the agents should know the steamship lines were looking after their affairs.

Q. You mean the agents themselves? A. The agents themselves, knowing that they have protection from the lines that they would uphold and maintain rates.

Q. You said the agents themselves; what do you mean by that? A. In order to sell passage tickets, the

*Anne C. H. Nyland*

1495

steamship companies need representatives or agents and for their own protection it was necessary to adopt these rules, so that rates did not become demoralized and that passage tickets sold were sold at the same price everywhere.

Q. I understood you to say, Mr. Nyland, that for the sake of the agents it was desirable to fix the rates and hold the agents to them. Now I want you to explain that, why it is important for the sake of the agents themselves? A. Because fair competition and a well regulated business will show results. In case of unfair competition entering the field, then the results will be very poor all over.

1496

Q. Do you mean that if one agent sold at less and gave a greater commission to the passengers, dividing it with him, that would hurt other agents; is that what you mean? A. Yes, sir.

Mr. Burlingham: That is all I have to ask —oh, there is one other question.

Q. Do I understand that the small committee had nothing to do with determining what steamers the excess passengers who could not be carried on the fighting steamer, should go on? A. It was suggested by the small committee, yes.

Q. To whom was that suggestion made? A. To the men who owned the steamer on which this excess should go.

1497

Q. Now I want to ask you whether, after having suggested or selected a steamer and reported it to the line owning that steamer, you made any reports to the conference or to Mr. Sandford on the subject? A. No, sir; we did not.

Q. Did you have anything to do with him in the matter? A. No, sir.

Q. Did he have anything to do with you in the matter? A. No, sir.

1498

*Anne C. H. Nyland*

Q. Did he give you any instructions in the matter?  
A. No, sir.

Q. The District Attorney has referred in some of his questions to a letter from your line, dated, I think, May 28th, 1908, in which reference is made to a cablegram from Mr. Peters. Do you know by whom that cablegram was received? A. I don't remember; no, sir; I don't know.

Q. Was Mr. Peters in the habit of sending cablegrams to the Holland-Amerika Line? A. No, sir.

Q. Were you in the habit of cabling to him? A. No, sir.

1499 Q. Do you know of any instance that you ever did so direct? A. No, sir.

Q. Or otherwise? A. No, sir.

Q. Did the small committee have anything to do with the matter of compensation for carrying excess passengers, or anything to do with the financial matters? A. No, sir.

Q. You know nothing about that? A. I don't know anything about it.

*RE-DIRECT EXAMINATION by Mr. Dorr:*

1500 Q. Mr. Nyland, you say that the Holland-Amerika Line did not have direct communication with Mr. Peters, is that right? A. To the best of my recollection we never had a communication with Mr. Peters.

Q. And the small committee had no direct communication with him? A. We may have written a letter to Mr. Peters, yes, sir. If I remember correctly it was the small committee who sent one letter to Mr. Peters.

Q. Now, Mr. Peters was the secretary under the pool agreement, was he not, Pool Agreement "AA"? A. I know he was the secretary of the N. D. L. V.

*Anne C. H. Nyland*

1501

Q. And also under the agreement which has been put in evidence here, Agreement "AA," in which all of the lines mentioned in that agreement were parties?

A. Very likely.

Q. Now then, in communicating with that secretary, who was the common representative of the lines abroad and the lines here which were a party to that agreement, was it communicated through Mr. Sandford? A. No, sir; I don't think so.

Q. No communication sent through Mr. Sandford?

A. Through Mr. Sandford to Mr. Peters?

Q. Yes. A. I don't think so.

1502

Q. How were communications had between Mr. Peters then and the conference lines in this country and the small committee? A. It may have been; I can only testify to what I know for our line and I know that our company never sent a message to Mr. Peters through Mr. Sandford.

Q. But you recollect Mr. Sandford's testimony, do you not, that cablegrams would come from secretary Peters to him or to his office and then he would distribute them to the proper persons, such as the small committee?

Mr. Burlingham: I object, this is cross-examination.

1503

A. Quite natural; yes, sir.

Q. And the small committee then, did it not have correspondence with Secretary Peters on the other side, through Mr. Sandford's office? A. Small committee?

Q. Yes? A. No, sir.

Q. As to this election ship? A. No, sir.

Q. Are you prepared to say positively as to that?

A. So far as I know; yes, sir.

Q. You recall Mr. Sandford testified to the contrary, do you not?

Mr. Burlingham: I renew my objection.

A. No, what did Mr. Sandford testify to; I have not seen that.

Q. Well, you were here during part of his testimony, were you not? A. No; only a small part of it.

Q. Well, if there were cablegrams which purported to relate to the small committee's business, which were transmitted through Mr. Sandford, would you be prepared to say that such communication did not in fact take place in that way? A. In case I have  
1505 evidence laid before me, of course, I would acknowledge it, but not to the best of my remembrance.

Q. You mean to say then nothing other than that you have no recollection one way or the other in the matter? A. Only that cables were sent by Mr. Peters to Mr. Sandford?

Q. In regard to the selected committee? A. I don't know that.

Q. Will you say they were not? A. I will not say.

Q. Will you say they were not sent in regular course of business by Secretary Peters, through Mr. Sandford for the information of the small committee?

A. I cannot answer the question; I do not know; I do  
1506 not recollect.

Q. I understood you to testify in answer to Mr. Burlingham's question that you had been a member of the small committee for a month; is that the only time you were a member of this small committee? A. No; if I remember it correctly the committee was organized for three months duration, but every month another member was selected to fill the vacancy, so that one member would serve three months, another would serve two months and the third man one month only and then gradually it was provided for that a committee always did consist of three members.



*Anne C. H. Nyland*

1507

Q. Was that one month's service which you have testified to in response to Mr. Burlingham's question, the only service you had on that committee?

A. No; whenever the three months were up, I would have the opportunity of serving again.

Q. Then repeatedly thereafter you were a member of that committee, besides the time to which you have testified? A. Yes, sir.

Q. When were you last a member of that small committee? A. I think that whole committee went out of existence in the beginning of 1910.

Q. There have been no meetings of the small committee since that time? A. No, sir; but meanwhile it was reorganized to the best of my recollection, it ended altogether in the beginning of 1912.

1508

Q. Since that time fighting ships have, from time to time been designated, have they not? A. May I ask what you call fighting ships?

Q. We will call them defending ships, ships which were employed in defending the Trans-Atlantic Lines against what you have designated as unfair competition? A. I don't know about that.

Q. You don't know whether any ships have been selected, fighting ships or defending ships, whatever you choose to call them? A. By whom?

Q. Have been selected to run in sailing competition with the ships of the Uranium line? A. By whom?

1509

Q. Do you know whether or not ships have been selected since 1910? A. I cannot tell you anything about that.

Q. You do not know anything about it, haven't you any idea as to whether such have been selected? A. I may have an idea, but I do not know anything.

Q. What is your idea about it? A. I have found the coincidence that whenever the Uranium Line steamers sail, that on or about the same day another steamer sails at reduced rates.

*Anne C. H. Nyland*

1510

Q. That is an interesting coincidence? A. Yes.

Q. Merely a matter of coincidence, not a matter of selection by any one? A. I don't know; I gave you my idea; that is why I say the thing is a remarkable coincidence.

Q. Have you any idea as to what is responsible for this coincidence that you regard as remarkable? A. I cannot testify as to those facts; only my own ideas.

1511 Q. Your ideas happened to be a matter of fact; what is your idea as derived from your expert knowledge of the steamship business, for which you have been testifying to Mr. Burlingham, as to the cause of this remarkable coincidence; what is your expert opinion about it? A. Well, I am not an expert, sir.

Q. Why, you will have to let us judge that, Mr. Nyland. What is your opinion as to the cause of this remarkable coincidence? A. My idea is or my belief is that the lines in Europe were pretty well posted about the sailing of the Uranium Line.

Q. By the lines of Europe do you mean the lines which are represented in the Continental and North American Conference and Atlantic American Conference? A. All the lines that are interested.

1512 Q. When you use the phrase "all the lines" do you intend to include any lines which are not represented in the North Atlantic or Continental Conference? A. Well, I mean all the lines that are interested in the North American trades, passenger trades.

Q. The Uranium Line is interested in North American trade, is it not? Do you intend to include that one when you said all of the lines? A. Yes, I mean that all of the lines in Europe, that means all the lines interested in North American passenger trade.

Q. Including the Uranium Line? A. Including the Uranium Line; those who were interested in the sailing of the Uranium Line.

Q. All these lines, including the Uranium Line, have a joint interest in what the Uranium Lines is doing, is that it? A. Not a joint interest, just simply interested in the sailing of the Uranium Line.

Q. Each line's interest then is entirely independent then in your mind? A. No, I don't think it is independent.

Q. Now, let us get down to it. Isn't it your belief that what happened is that the various lines which are parties to Agreement "AA" and supplemental agreements thereto, ascertained the rates which were being offered by the Uranium Line and the dates of the sailing of its ships and appoint or select a ship from one of the lines, which is a party to Agreement "AA" or supplemental agreements, and provide for its sailing as a fighting or competitive or defending ship, whatever you choose to call it, against the ship of the Uranium line which is scheduled to sail on that particular date? A. I don't know that, sir.

1514

Q. I am asking you what is your belief? A. I am not competent to answer that question.

Q. Have you any belief on the matter or opinion on the matter? A. I can't say that, sir.

Q. You cannot say whether you have an opinion or belief on that? A. No, sir.

Q. Your mind is an entire blank? A. No, sir, I do not want to give you the impression of a wrong opinion.

1515

Q. But you have an opinion in your own mind in the matter? A. I am not competent to form a good opinion on the matter, sir.

Q. Let us judge that, or the Court judge it when they read your testimony; that is not for you to do; that is for the Court to pass upon?

Mr. Spooner: He means intellectual competency, not legal competency.

1516

*Anne C. H. Nyland*

Q. Now have you any opinion? A. Well, sir, an opinion that means—

Q. Just answer my question, yes or no? A. Based upon certain factors or causes.

Q. I am not asking you on what you based your opinion; I have asked you whether you have an opinion? A. I am not competent to have an opinion.

Q. Have you an opinion, I do not care whether you are competent or not at the present moment; that is for the Court to pass upon, not you or I. Have you an opinion? A. Yes, I have an opinion.

1517 Q. What is your opinion? A. Well, it is hard to express.

Q. Well, do your best? A. It may be that there is some understanding does exist.

Q. To the effect which I have described in my question? A. No, sir, this question is so long I can't remember all what you said.

Q. (Question read)? A. Well, it is possible; it is all I can say.

Q. Now, does that appear to you to be the most reasonable explanation of this remarkable coincidence?

A. I am not competent to tell about that.

Q. As to whether that is a reasonable explanation?

1518 A. Because I don't know all of the causes. I do not know any of these agreements you refer to, might have seen them but I don't know them.

Q. Well, you have not in mind the names of the steamship companies to which I refer, is that it. Of course I can make my question clear on that point by enumerating the steamship lines, if you desire? A. I presume you refer to the members of the American-Atlantic Conference?

Q. Yes, you know what those companies are? A. Yes, sir.

Q. Well, now, you have no question in your mind but that as a matter of fact, since 1910, ships which

were the ships of one or the other of the various lines which are the members of the Atlantic Conference, have sailed on the same date as the ships of the Uranium Line; that is true, is it not? A. Yes, sir.

Q. And it has happened, has it not, if not invariably, almost invariably that the rates for third class business advertised to the public by the ships of the conference lines has been reduced from the rates which is originally charged for steerage business on that ship, for the particular sailing which occurs on the same date as the sailing of the Uranium Line ships? A. Have such rates been reduced, yes, sir.

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Q. And that the transaction appears to be the same as the sailings of the various so-called fighting ships, which took place while you were on the small committee, which designated such fighting ships? A. Apparently there was a similarity, yes, sir.

Q. That is apparently there has been no change in the plan of operations, except that the designation or selection of the particular ship of the Conference lines, has not been made in New York City? A. I don't know anything about it, sir.

Q. Do you know of any other change or can you think of any other change that has occurred in this system? A. Well, how can I compare the two matters, while I know the one and not know the other?

1521

Q. Do you know of any other difference than that in the operations of the system? A. I cannot express any answer to that question, as long as I only know one of the two methods.

Q. Do you know of any other difference, I am asking you, what you know; do you know of any other difference; you say the results are the same; do you know of any other difference in the system which produced those results other than the facts that the designation of the so-called fighting ships is not made now

1522

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by the small committee in New York? If you know of any other difference in the system, why please state what it is? A. I do not see any difference, no, sir.

Recess until 2:00 o'clock P. M.

Afternoon session.

ANNE C. H. NYLAND recalled:

*Direct-examination by Mr. Dorr:*

1523

Q. Mr. Nyland, have you during the period since 1908 been accustomed to charging the same steerage rate for all of these steamers of your line? A. Since 1908?

Q. Yes? A. No, sir, the rates have changed.

Q. I don't know that I put my question very clearly; what are the ships of your line? A. There are five steamers which carry passengers.

Q. Do you charge the same steerage rate for each one of them? A. Yes, sir.

Q. There is no difference between the rates of your steamers? A. No, sir.

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Q. Is that true of all the lines which are members of the conference? A. No, sir.

Q. Take the North German Lloyd, do the rates vary with the steamer? A. Yes.

Q. What is the highest rate that is charged for the North German Lloyd steamers? A. The express steamer of the North German Lloyd between Bremen and New York?

Q. Yes, what is that rate, or what have they been during the last four years, if you can recall, if they have varied? A. They have varied; sometimes higher and sometimes lower.

*Anne C. H. Nyland*

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Q. What is the ordinary rate if you can state it?  
A. Around \$38.

Q. That is on eastbound? A. On eastbound.

Q. And on westbound, what is it? A. It may be higher, dependent upon the conditions and circumstances.

Q. It is ordinarily \$40, is it not? A. Around that, yes.

Q. On westbound? A. Yes.

Q. What do they charge for the steamers that are not express steamers on the North German Lloyd?  
A. The regular steamers charge about \$3 lower.

Q. Now, how about the Hamburg-American; is there any difference between the different steamers on the Hamburg-American? A. In the same way, yes. You mean for the period between 1908, and now, isn't it?

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Q. Yes. A. Yes.

Q. And the same range of difference, about \$3 difference between the express steamer and the other steamer, or is it sometimes more? A. The Hamburg-American Line today does not have express steamers, so there is no difference between the—

Q. Do they only have one steerage rate for all the steamers of the line? A. Yes, to the best of my memory, yes.

1527

Q. But at times they have had different rates, have they not? A. Yes.

Q. On the different steamers? A. Yes.

Q. And the same way with the Cunard Line? A. Yes.

Q. Did they have higher rates for certain steamers than others, if you remember? A. If I remember correctly, yes.

Q. Now, Mr. Nyland, are you familiar with the tariff rates on continental points, eastbound? A. Pretty familiar, yes.

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1528

Q. And you are familiar with them from the different European ports? A. Fairly, yes.

Q. From what part of Europe does the great bulk of the westbound steerage traffic come? A. From ports of Hamburg, Bremen, Rotterdam, Antwerp and Havre.

Q. And where does that traffic originate on the continent of Europe, the bulk of it? A. Principally in Austria, Hungary, Russia—that's all.

Q. Are you familiar with comparative rates to and from ports in Russia to Hamburg and Bremen and Antwerp and Rotterdam? A. I have a general idea, yes.

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Q. Is there a difference between them? A. Oh, yes.

Q. And in favor of what port is that difference? A. Usually Hamburg has the lowest rates from the interior of Russia to the port as the distance is shortest.

Q. And would Bremen ordinarily have a lower rate than Antwerp say? A. It does not make much difference; there may be a little.

Q. You have stated that the object of the small committee was to protect the conference line against unfair competition? A. Yes.

1530

Q. Now, the unfair competition which you have mentioned for instance, 1909, was the unfair competition of the Uranium Line or the North West Transport Line? A. Yes.

Q. In what particular was this competition to your mind unfair? A. The Northwest Transport Line or the Uranium Line published circulars on which or by which a certain rate was given; they never sold tickets at these rates; a commission from \$3, \$4 and \$5 was allowed, making such a low rate.

Mr. Spooner: Was that charged to the passenger?

The Witness: To agents.



A. (Continuing.) Making such a low rate that it was quite natural people who didn't know anything about traveling by steamships wanted to avail themselves of said lower rates, and the tickets were sold between the net rate published by the Uranium Line and the public rate.

Q. The Uranium Line published a rate, ordinarily published a rate of \$28 eastbound and \$30 westbound, did it not, from Rotterdam—the Uranium Line published a rate of \$28.50 eastbound and \$30 westbound, did it not? A. Sometimes, not always.

Q. Sometimes lower than that? A. Yes.

1532

Q. Did you regard it as unfair competition for the Uranium Line to publish a rate of \$28 eastbound and \$30 westbound? A. Taking into consideration the high commission they paid, yes.

Q. What was unfair if they could do this at that rate, about their charging that rate? A. They could do business at any rate, no matter what the rate was published by them.

Q. Do you mean to tell me that they did business at rates less than the published rates— A. Yes.

Q. When you did not oppose them with fighting steamers, is that what you mean to testify? A. Yes, that is what I mean.

Q. That is what they always do; you are testifying now from your own knowledge? A. To the best of my knowledge, yes.

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Q. You have stated under oath that they did not adhere to their published rates when you did not compete—on the occasions if there were any in which you did not put fighting steamers on? A. To the best of my knowledge, yes.

Q. Is it a fact that as soon as you learned that these steamers were being put on by the competing line you immediately and without waiting to see what

1534

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happened appointed fighting ships? A. We suggested a fighting ship.

Q. Immediately, as soon as you learned there was to be these competing steamers, isn't that so? A. Let me understand the question right. We knew maybe three or four years ahead that the Uranium Line was advertising sailings—

Q. Yes? A. But here this competing rate as you will call it was never made until about a week before the sailing time.

Q. You mean the competing rate? A. Yes.

1535

Q. And just as soon as these lines started in to enter the North Atlantic steerage traffic the conference lines took measures to appoint fighting steamers, did they not? A. Yes, they appointed fighting steamers.

Q. So that just as soon as the opposition steamers started in they were met by your fighting steamers? A. I don't quite understand that.

Q. As soon as the opposition, the independent steamer lines put steamers on they were in fact met by your fighting steamers? A. Yes, but not until about a week before sailing time.

Q. You did not publish your cut rate until a week before sailing time? A. Yes.

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Q. There is nothing unfair, is there, in an independent line carrying steerage passengers at a rate less than the ships of the conference lines? A. No, sir.

Q. There is nothing unfair, is there, in the independent line paying a larger commission to the agents than the conference lines do, is there? A. Yes, there is in case this commission is used to cut rates.

Q. Just one minute. The conference lines have a rule which forbids any conference agent to sell tickets for an independent line, does it not? A. Yes.

Q. And an agent then who acts for the independent line is in a position that he can act only for one line? A. Yes.

Q. Is he not? A. Yes.

Q. And instead of being able to make a small profit on a large number of transactions for a large number of lines he is confined for his remuneration to the infrequent sailings of a single non-conference line, is he not? A. Yes.

Q. And is it not, therefore, eminently reasonable and necessary if agents are to be obtained for such an independent line that they should receive a higher commission than is paid by the conference lines? A. I don't see that.

Q. Don't you see that the opportunities of the steamship agent for making money out of the business are less where he represents a line, one line, with a semi-monthly sailing than they are with an agent who represents all of the conference lines with ships sailing practically every day, some times more than one ship a day? A. Why doesn't he become agent for the conference then?

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Q. He would become an agent for the conference lines, would he not, unless he could receive a larger compensation from the independent line; that is what you would do, would you not, if you were such an agent? A. I would throw up the business in disgust if I could only represent an independent line.

Q. You would be unwilling, would you not, to act for an independent line unless you received a large compensation per ticket than what you received for the conference lines? A. I don't think it would pay.

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Q. That is, it would not pay and don't pay on the independent lines unless the agent receives a larger commission? A. No, I don't mean that; even when you receive a larger commission in case he has to divide that commission with the public; what is left of the larger commission?

Q. You will say that it is unfair if the agent divides his larger commission; now, suppose that, as

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frequently happened, did it not, that line makes a lower rate—that the independent line has a rate of \$28.50, with a \$3 commission, and a fighting ship is put on with a rate, we will say, of \$27.50, with a \$2 commission, should you not say that it would be necessary for the agent of the independent line for himself to get business and keep that \$1 cut on the part of the fighting ship, to give up part of his commission? A. They usually get more than that.

Q. Isn't it the fact that they do get more than that due to the fact of the superior ships and superior facilities of the conference boats; what is there unfair in that, Mr. Nyland?

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Mr. Spooner: I think I will note an objection to this line of questions—as argumentative and not proper cross-examination.

A. One pays so much and the other so much. The tickets for the so-called independent lines are sold at different rates.

Q. The fighting ships are as a rule ships belonging to lines which have an established reputation, have they not? A. Yes.

Q. And are ships which are usually of larger tonnage and greater speed than the ships of the independent lines, are they not? A. Not greater speed.

1542

Q. Do you regard them as ships having superior facilities? A. I believe they are, yes.

Q. And more established reputation? A. Yes.

Q. Then what happens is this, is it not: the independent line taking into consideration its inferior facilities and lack of established reputation makes an initial rate for these points, we will say, of \$28.50 and the conference lines instead of relying on the superiority of their vessels and superiority of their established reputation put on fighting ships with an advertised rate of either the same rate as the advertised rate of the

independent line or a lower rate, isn't that what happens; isn't that what has been happening for the last six years in this business?

Mr. Spooner: I renew the objection. The government will have an opportunity later of summing up. I object to this as argumentative and not proper direct-examination.

A. The steamers of the so-called independent lines as I said before had more weight than the so-called fighting ships.

Q. Just answer my question; isn't what is happening this: The independent lines that publish a rate of \$28.50, we will say, or \$28, we will say, on east-bound traffic, the conference lines have changed the rate of a steamer of one of their conference lines which was to sail on the same day from, we will say, \$33, reduced it down to \$28 or down to \$27, now, hasn't that thing happened and happened recently?  
A. I don't remember a single instance, but it is possible, yes.

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Q. I am not asking you to recall specific instances, but has not that been the course of business? A. That may have been, yes.

Q. Now, that having taken place your lines, the conference lines, with their superior facilities and their superior agency facilities have a great advantage over the independent lines, have they not? A. A little, yes.

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Q. And if your published advertised rate is \$27 as against their advertised rate of \$28, taken in connection with your superior facilities and more established reputation and better agency force, the fighting ships business that he should surrender a lot of his commission has a greater advantage, has it not? A. Yes.

Q. Now, what is there unfair then? Isn't it necessary if the agent of the independent line is to do any

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1546

sion and charge a lower rate? What is their unfair about that to the conference lines? A. It demoralizes the business.

Q. Do you mean by demoralize the business that it enables the independent line to secure business? A. No, if any of the tickets for passage are sold at different rates.

Q. Can you suggest a fair method of competition by which the independent line would be able to do business? A. I have never given my attention to what an independent line should do or should not do.

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Q. You said without hesitation that this fighting ship proposition, this fighting ship system, was adopted to prevent the unfair competition of independent lines? A. Yes.

Q. Now, tell me how competition, any competition, could be conducted, under which the independent lines could live, what would in your estimation be fair? A. It is not for me to say what is fair.

Q. That is, it is not for you to say whether it is fair or unfair? A. No, I don't say that. I say it is not fair for me to say what is fair in regard to an independent line. I can only say that whenever a rate is published of an independent line of \$28 and a ticket sold for \$24, that is unfair; \$25, \$26, any price.

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Q. In other words, if the rates are reduced either by the independent line or its agent, to a figure in which the public is willing to travel by the independent line and then in your estimation that competition is unfair competition? A. As soon as any statement made by an independent line is misleading, I think that it is unfair.

Q. Misleading as to whom? A. To the public.

Q. Who is it unfair to then, this competition; is this competition unfair to the public? A. Whenever any man or any traveler wanted to buy a ticket on the independent line, in one place you could get a ticket

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for \$24, assuming a \$28 rate, and in another place you may have to pay \$26 and a third place \$25, and he is an agent of the Uranium Line.

Q. Then the unfairness of this which you speak of is an unfairness not to the other lines, but to a member of the public, because one member of the public can travel cheaper than another, is that what you have in mind? A. Not only to the public, but also to the lines.

Q. How is it unfair to the lines? A. Because it demoralizes the business; it leaves it in an unstable, uncertain condition; people don't know which is which.

1550

Q. You regard it as unfair competition for the independent line to reduce its rate after you have reduced the rate of the fighting ship below their rate; do you regard that as unfair? A. In the way you put it perhaps not, but there are other things which also should be known to you.

Q. You would not regard it as unfair competition for the North German Lloyd to charge a lower rate or for your line to charge a lower rate, on a slow steamer than the North German Lloyd does on its express steamers? A. No, sir, but—

Q. Now, have you considered Mr. Nyland, whether there would be any probability of the agents of an independent line reducing the rates of those independent lines if you did not put these fighting steamers on; what would be the incentive of the agents to further reduce those rates? A. I don't know what their incentive may be, but they do.

1551

Q. Do they do it in the cases where you did not put on fighting steamers? A. Yes, I think so.

Q. When? A. I wouldn't say offhand, but I am quite sure I would be able to show you a steamer—

Q. Do they do it when you—isn't it a fact that the difficulty which the independent lines experience with their agents is due to the fact that you initiate a cut

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1552

in rates which, because of your superior facilities and superior reputation, compel the independent lines to make a further cut and you people come back with a still further cut and the agents come to expect this cutting in rates and necessarily, in order to do business, give up or get accustomed to giving up part of their commission? A. We have to protect our agents.

Q. That is the only answer you can make? A. In explanation, yes.

Q. You think that is responsive? A. In explanation.

1553

Q. Have your lines tried the experiment of not opposing the independent lines with fighting steamers? A. I think so, yes.

Q. Did that result in unfair competition against your lines? A. On such occasions to the best of my recollection the independent lines carried the business that week.

Q. That is, they carried that business, did they not, not because of any sharing of commissions by the agents of the independent lines, but because the public preferred the rates fixed by the independent lines, even though their facilities and reputation was ~~was~~ established than yours, is that not true? A. Not exactly. In my opinion they were independent steamers, or

1554

rather steamers of independent lines, and no matter whether there was a reason or not, the tickets were very seldom, or perhaps never sold at the published rates.

Q. Now, Mr. Nyland, take the case where the rate established by the independent line is \$28, we will say, eastbound, and that your rates eastbound, are \$33.50; assuming that the agents of each line retained their commission, do you take it that the independent line would have any difficulty in filling its ship, or in obtaining a reasonable number of passengers for its ships? A. Perhaps not; I don't recall—



Q. Do you regard it as unfair for the Northwest Transport and the Uranium Line to fix its steerage rate lower than your rate? A. As I said before, no.

Q. Well, then, when this fighting ship proposition started or this fighting ship system, the situation was merely, was it not, that the Northwest Transport Line and the Uranium Line when they started up advertised a lower rate for its inferior facilities than your lines were advertising for their superior facilities, that was the only fact that the conference lines went to work from, was it not? A. The Uranium line very frequently through their agents sold tickets for the so-called Rotterdam Line; our line is officially or unofficially also known as the Rotterdam Line, and I claim that the tickets at that low rate were sold for the Rotterdam Line conveyed the impression that they were sold for the Holland-Amerika Line.

1556

Q. Do you mean to say that that has occurred prior to the—it could not have occurred, could it, prior to the first sailing of the Uranium Line? A. Yes, it occurred also in the Russian East Asiatic Line.

Q. You mean the Russian East Asiatic Line had done that? A. I think so, yes.

Q. The Russian East Asiatic is a member of the conference now, is it not? A. Now it is a member of the conference.

1557

Q. So you can hardly lay that to the Uranium Line can you? A. No, I don't lay that to the Uranium Line, but the Uranium Line done the same.

Q. You started with the fighting ships as soon as the Uranium independent line advertised that it was going to enter into the business, did you not, in fact, began preparations for fighting ships, is that not so? A. That was already done long before the Uranium was there.

1558

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Q. It had been done against other lines? A. Yes.

Q. But just as soon as you learned the Uranium also was going to operate you were determined to apply the same methods to the Uranium Line, did you not? A. Yes.

Q. And at that time the only evidences of unfair competition were that the Uranium Line was offering its inferior facilities for a less rate than you were offering your superior facilities? A. Yes.

1559

Q. And that you have stated you regard as perfectly fair? A. Simply the question of rates, but not the question of the tactics used in order to sell tickets for the independent line in case they bribed agents.

Q. You did not wait to see whether unfair tactics would in fact be used before you determined on the fighting ships, did you; what you called unfair tactics? A. First the selling of tickets and the false representations and simply the cutting of rates.

1560

Q. Just answer my question; when you determined on running fighting ships, the situation was, and the only element of the situation was, that the Uranium Line had announced it was going to enter the transatlantic steerage trade and was going to offer boats, inferior facilities at a less rate than your conference lines were offering for their superior facilities; that was the situation, was it not? A. The fighting ships were put on on account of the excessively low rates made by the Uranium Line.

Q. Now, we are coming to a little different proposition, are we not? You say the excessively low rates; did you regard the \$28.50 as an excessively low rate for the steamships of the Uranium Line?

Mr. Spooner: Objection renewed. You are arguing with your own witness.

A. As compared with the other rates, yes.

Q. Do you mean to say that the Uranium Line could

not at that rate, carry its complement of passengers and make a profit on the money invested in that line?

A. I think they could make a profit on the money invested.

Q. You think they could make it? A. Yes.

Q. Why was that an unreasonably low rate if they were making a profit on the money invested? A. I don't say it was unreasonable; we are entitled to make a profit on the money invested, but in case rates to a certain port of Europe are made at such a low figure without necessity, I cannot call that fair competition.

Q. That is to your mind any line which makes its rates not from the standpoint—not on the basis of what is the highest passenger rate, but merely on the basis of what would yield to it a fair return on the capital invested is not acting fairly to all the other lines? A. In case they obtained business through underhand methods.

1562

Q. The making of a lower rate is not an underhanded method in business is it, and publishing it? A. In the way it was done.

Q. The Uranium Line when it started in business published announcements, did it not, of the sailing of its ships, and the rates which were to be charged by those ships for the steerage business, did it not? A. Yes.

1563

Q. And immediately and prior to the first sailing, of any ship of the Uranium Line arrangement was made by the conference lines, was it not, to oppose the ship of the Uranium Line by the so-called fighting or defender ships? A. It was not done at the beginning.

Q. At the beginning of the Uranium Line? A. I don't think so; it was done after the Uranium Line went down—

Q. Are you prepared to state positively that that was not done with the very first steamer of the Uran-

*Anne C. H. Nyland*

1564

ium Line? A. I have no recollection of that, when the Uranium Line went down with the rates.

Q. Do you intend to state, or do you state, that the first ship run by the Uranium Line was not opposed by a fighting steamer selected by the small committee of the conferences? A. I may add before I have a discussion—do you refer now to the New York Line, to the Continental Line and the Uranium Line?

Q. I think my question speaks for itself. I am referring to the Uranium Line? A. When was the Uranium started; may I ask that question?

1565 Q. You have to call on your recollection? A. Then I can't answer the question.

Q. What is your recollection as to when the Uranium Line was started? A. To my recollection it was started long before the fighting steamers were appointed.

Q. Well, let me put it this way: Is it not true that the first ship which was sailed by the Uranium Line in the North Atlantic steerage traffic was opposed by a fighting ship selected by the conference? A. I don't recollect.

Q. Will you say that it was not? A. I don't know it.

1566 Q. You don't know, one way or the other? A. No, sir.

Q. Well, what is your belief or best recollection? A. To the best of my recollection it was not the first.

Q. Just let us have that recollection as specifically as you can; what was the first ship of the Uranium Line; what was its first sailing and when? A. Perhaps you might enlighten my memory a little.

Q. The first sailing of the Uranium Line was, was it not, in April, 1910? A. It may be; I don't know, sir.

Q. You are prepared to say then, Mr. Nyland, that the first steamer of the Uranium Line was not opposed by a fighting steamer in April, 1910? A. I can't say that. The Uranium Line was the continuation of the Northwest Transport Line; simply the same line under another name, and in case we were opposing the other transport line's steamer we may have opposed the Uranium Line.

Q. From the start? A. Yes.

Q. How about the first ship of the Northwest Transport Line? A. That was a continuation of the New York and Continental Line.

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Q. And did you oppose the first ship of the Northwest Transport? A. I can't say, sir; I don't think that our committee was appointed before the establishment of the New York and Continental Line.

Q. Did you oppose the first ship of the Northwest Transport? A. In case we were opposing the ships of the New York and Continental Line it may be we were opposing the ship of the Northwest.

Q. Did you oppose the first ship of the New York and Continental? A. I don't think so, sir.

Q. Are you sure of that? A. As far as I can see, yes.

Q. How about the Russian Volunteer Fleet? A. I don't think we opposed the first ship of the Russian Volunteer Fleet.

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Q. Don't you know that before there was a single sailing of the Russian Volunteer Fleet preparations were made to put certain ships of the Russian East Asiatic Line in competition with them and certain ships of the Hamburg-American Line? A. I don't recollect that sir.

Q. Now, as to the New York and Continental; have you a recollection on that point, or have you not? A. Very little.

*Anne C. H. Nyland*

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Q. One way or the other? A. One way or the other.

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Q. I call your attention to Exhibit No. 130, which is already in evidence and ask you whether this does not refresh your recollection that as soon as the plans of the Russian Volunteer Fleet were made known, or were made public, that the pool lines adopted plans to fight that new line and that it was part of their plan that the Russian East Asiatic should enter the field, that the Russian Volunteer Fleet was entering upon, and further that the Hamburg-American or the North German Lloyd Line would put two steamers at the disposal of the East Asiatic Company to make this fighting service, and that any loss should be borne by the N. D. L. V. Lines? A. With this little speech of intention I don't know the intention has been carried out.

Q. But that appears to have been the intention of the pool lines, does it not? A. Apparently, yes.

Q. Do you recall that pursuant to the plan outlined in Government Exhibit No. 130, the letter of June, 1906, which has just been shown you, the Hamburg-American put on the service two of its steamers in connection with the steamers of the Russian East Asiatic Fleet? A. I don't recollect that.

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Q. You haven't any recollection about that at all? A. No, sir.

Q. Never heard of it? A. This letter says so, but I don't recollect it.

Q. The East Asiatic Line was at this time, was it, the beginning of the competition against the Russian Volunteer Line, was it not? A. How is that? I don't catch the first part.

Q. The Russian East Asiatic Fleet at the time of that competition, at the time that competition was begun against the Russian Volunteer Fleet, was a member of the conference, was it not? A. That may have been, yes.

Q. And do you recall that subsequently it ceased to be a member of the conference, do you not? A. That the Russian East Asiatic Line went out of the conference?

Q. Yes? A. My mind is not very clear on that subject, sir.

Q. You do recall, do you not, that provision was made by the conference lines at a subsequent period, subsequent to 1906, for fighting steamers to run in competition with the ships of the Russian East Asiatic Company? A. Yes.

Q. Were not those steps taken immediate on the withdrawal of the Russian East Asiatic Company from the conference? A. From the conference?

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Q. From the conference? A. I don't remember that, sir.

Mr. Dorr: I offer in evidence what purports to be a circular of the Continental Conference, under date of December 27th, 1906.

Mr. Beers: I object to its admission on the ground that it refers to an agreement other than AA and is not within the issues.

Marked Petitioner's Exhibit No. 140.

Mr. Dorr: Also a circular of the Continental Conference under date of March 2nd, 1907.

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Mr. Beers: Same objection.

Marked Petitioner's Exhibit No. 141.

A. (After looking at 140 and 141.) Yes.

Q. Looking at these circulars which have just been offered in evidence, does it not refresh your recollection that the Russian East Asiatic Steamship Company were at one time members of the conference and that their connection with that conference terminated on or about December 27th, 1906? A. Yes.

Q. Now, following that, were not fighting steamers put on against the East Asiatic Company boats? A. I

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1576

don't remember when the fighting steamers were put on.

Q. Were not competition steamers, if you choose to call them such, put on? A. That may have been so.

Q. Now, Mr. Nyland, do you recall whether or not the conference lines themselves did not at times allow an extra commission on tickets sold by their agents for fighting steamers, for passage on fighting steamers? A. An extra commission?

Q. Yes? A. Just now I have no recollection of it.

1577 Q. You have no recollection of it? A. No recollection of it, no, sir.

Q. Are you quite clear on that? A. Not quite clear.

Q. What is your best recollection?

Mr. Spooner: His best recollection is that he has no recollection.

A. My recollection is that there was not an extra commission paid.

Q. Do you recall whether or not the small committee urged that such an extra commission be paid?

A. The small committee?

1578 Q. Yes. A. In 1906?

Q. At any time during this period we have been discussing, between 1906 and 1912? A. That means after the establishment of the small committee in 1908, between 1908 and 1912, isn't it.

Q. Yes. That an extra commission was paid? A. I have no recollection of that, sir.

Q. I show you Government Exhibit No. 31, and ask you whether that refreshes your recollection? A. Apparently the small committee recommended the adoption of an extra commission, in order—



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Q. Was that policy followed? A. I couldn't say.

Q. I show you Government Exhibit No. 114 and ask whether that "N" is your initial? A. Apparently, yes.

Q. I ask you to read that exhibit and ask you whether that refreshes your recollection as to whether or not the small committee in the case of the "Estonia," in competition with "Uranium," an extra commission was granted by the Conference Line? A. (After reading.) According to this letter this extra commission was not paid.

Q. In the case of the "Estonia"? A. The "Uranium." 1580

Q. (Reading.) A. It never was paid.

Q. And that has worked with very good results? A. There it was, but not later on.

Q. But in that case you did give an extra commission? A. Yes.

Q. Turning again to the question of unfair competition by the independent lines, did you regard it as unfair competition for the Russian Volunteer Fleet to have established a ship service between Libau and New York, between which ports there had theretofore been no service? A. The establishment of the service, no, sir.

Q. You did not regard the establishment of that line as unfair competition? A. No. 1581

Q. Did you regard it as fair competition on the part of the Continental Lines for them to endeavor to prevent the Anglo-Continental Reisebureau of Rotterdam from acting as agent; did you regard it as fair competition for this combination of lines controlling practically all of the North Atlantic steerage traffic to bring pressure to bear on this bureau to prevent them from acting as agents of the Russian Volunteer Fleet?

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1582

Mr. Spooner: I object to the question as assuming a state of facts not proven and contrary to the proof.

A. Well, that depends.

Q. You regard that as fair competition? A. That depends on what that Anglo Reisebureau which you mentioned, was.

Q. What it was? A. Yes.

Q. Well, apparently it was a bureau which acted as steamship agent in Rotterdam, apparently a responsible party? A. I cannot judge about this; it being in  
1583 Europe I have no opinion on that matter.

Q. Do you regard it as fair competition on the part of the lines which were in the conference which controlled practically all of the North Atlantic steerage traffic to endeavor to prevent, or to enter into an agreement, with the Western Passenger Association by which the Western Passenger Association and the rail lines which it represented would agree not to grant independent lines the same commercial allowance which was being granted to the lines in the combination; is that your idea of fair competition?

Mr. Spooner: Same objection.

1584

A. To the best of my recollection this commercial allowance was always granted to the outside lines.

Q. There is in evidence here, Mr. Nyland, I will refresh your recollection, an agreement between the Western Passenger Association or the lines which compose that association, and the conference lines to the effect that no commercial allowance shall be granted to a steamship line not a party to that agreement, and further there are the minutes of a meeting in 1909 to the effect that that agreement was being lived up to and that the commercial allowances were not being granted to the independent non-conference

lines; do you regard that as fair competition? A. I was always in favor of allowing that commercial allowance here to the outside lines.

Q. And then from your standpoint the endeavor to prevent the independent lines from getting that commercial allowance was not fair competition? A. I haven't given it much thought.

Q. Do you regard it as fair competition for the conference lines to endeavor to prevent the independent lines from receiving any commercial allowance whatever in any territory on eastbound business? A. I believe that commercial allowance could only be obtained from the railroads.

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Q. Could be obtained? A. Yes.

Q. In spite of an agreement which the ship lines had with the railroad lines? A. As well as I remember any steamship line, or, at least our company, has been in a position to obtain commercial allowances either one way or the other.

Q. That is your company has always obtained them, is that it? A. Yes, even though there was no agreement for them.

Q. Has your line ever obtained them when there was an agreement with the railroad lines and the other ship lines to the effect that they should not be granted to you? A. Usually we were in it.

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Q. You were always in it, were you not? A. Appeared to be, yes.

Q. Did I understand you, Mr. Nyland, that the rates of the conference lines fighting steamers had never been reduced below the rates of the independent lines? A. To the best of my recollection they were never reduced below the rates of the independent lines.

Q. Now, will you refresh your recollection by looking at this letter of July 9th, 1909, Exhibit No. 117?

A. (After reading.) Well, this concerns what I said.

Q. You say this concerns what you said, and you

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*Anne C. H. Nyland*

are quite positive about that now, are you, that they were never reduced below? A. To the best of my recollection they were never below.

Q. I show you Exhibit No. 109, your initial is on that letter, is it not, Mr. Nyland? A. Yes.

Q. What is your best recollection now? A. (After reading letter.) According to that letter a rate was made of \$25 on the Raglan Castle.

1589 Q. Isn't it your recollection now on looking at this letter that the rate of the Volturno of the Northwest Transport Line was \$30 and that the small committee fixed as a rate on the fighting steamer, the Estonia, a rate of \$26? A. According to this letter, yes.

Q. Didn't you write the following week that that plan had worked very well, the letter of May 20th, 1909, Exhibit No. 111; did you inform your home office that the plan that you had followed in the case of the Estonia and Volturno had worked very well? A. Well, apparently had worked very well or satisfactorily.

1590

Mr. Burlingham: Mr. Gips is here in response to a subpoena which was served on him this afternoon asking him to produce certain circulars to agents and other records of European railroad tariffs, and he told the marshal it was impossible for him to get it and appear at once, and the marshal advised him to come up, and he will make a search for them; do you want him to find the documents?

Mr. Dorr: We want him to find the documents as soon as possible.

Mr. Burlingham: You will give him a reasonable time to get them?

Mr. Dorr: Yes. I understand the railroad tariff is a printed document and that it is an easy matter to produce that, and as to the circulars he may look for them and produce them.

Mr. Bullowa: Mr. Straus appears in response to a similar subpoena. 1591

Mr. Shipman: For the North German Lloyd I produce a circular of the North German Lloyd Steamship Company giving the rates of railroad fare between points in Germany, Austria, Switzerland, etc., and Bremen under date of April, 1909, with corrections noted in red ink up to June 23rd, 1910; also a similar circular under date of April, 1911.

Also of the Russian East Asiatic Steamship Company concerning European railroad tariff under date of September, 1911; April, 1911; October, 1911 and certain circulars of 1911 and 1912 with a statement that all circulars prior to that time were destroyed prior to the service of any subpoena or any notice. 1592

Mr. Burlingham: In response to your request of last Thursday I have had search made at the offices of the conference for a copy of a letter from Mr. Lawson Sandford to C. B. Richards & Company in reply to their letter of February 28th, 1907, and no reply can be found; I have also looked for the minutes of the conference. I stated we had no minutes of the conferences for 1909 and 1910 and I find that no meetings of the North Atlantic Passenger Conference were held in 1909 or 1910, that no meetings of the Continental Conference were held in those two years and that the meetings of the American Atlantic Conference were held January 7th, 1909, March 18th of the same year, April 2nd, April 15th, June 3rd and July 29th. At the office of the conference there is no copy of this set of minutes, but I have the minutes here of the American Atlantic Conference from January 7th, 1909, to June 7th, 1909, and I produce them. 1593

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Marked Petitioner's Exhibit 142 for identification.

Mr. Burlingham: In response to the Government's request for the production of agreements with the railway companies or associations with regard to commercial allowances I have obtained from the conference quite a number of these documents, six in number.

Received for identification Petitioner's Exhibits 143 to 149.

The rates of railroad fare between points in Germany, Austria, Switzerland, etc., and Bremen are marked for identification Petitioner's Exhibit 149 for April, 1911.

1595

The same rates of railroad fare for April, 1909, marked Petitioner's Exhibit 150 for identification.

The European inland tariff to or from Rotterdam or to or from Libau of the Russian East Asiatic Steamship Company marked Petitioner's Exhibit 151 for identification.

The European railroad tariff from Rotterdam and to or from Libau of the Russian American Line, re-issue of April, 1911, marked Petitioner's Exhibit 152 for identification.

1596

European railroad tariff from Rotterdam and to or from Libau of the Russian American Line, re-issue of September, 1911, marked Petitioner's Exhibit 153 for identification.

Hearing adjourned to Wednesday, June 26, 1912, at 10:00 o'clock, A. M.

## UNITED STATES DISTRICT COURT,

1597

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,  
Petitioner,

against

HAMBURG-AMERIKANISCHE PACK-  
ETFAHRT - ACTIEN - GESELL-  
SCHAFT, and others,  
Defendants.

Before  
Charles El-  
liott Pickett,  
Esq., Ex-  
aminer.

1598

New York, June 26th, 1912.

Hearing resumed pursuant to adjournment.

Appearances:

Henry A. Wise, Esq., Goldthwaite H. Dorr, Esq.,  
Henry A. Guiler, Esq., John S. Bradley, Esq.; for the  
Petitioner.

Messrs. Burlingham, Montgomery & Beecher, by  
Charles C. Burlingham, Esq., and Norman B. Beecher,  
Esq.; for the Anchor Line, Ltd., *et al.*

Messrs. Choate & Larocque, by Nelson Shipman,  
Esq.; for Norddeutscher Lloyd, *et al.*

Messrs. Spooner & Cotton, by L. C. Spooner, Esq.;  
for the Allan Line, *et al.*

1599

Messrs. Lord, Day & Lord, by Lucius H. Beers,  
Esq., and Allan B. A. Bradley, Esq.; for the Cunard  
Line, *et al.*

Ralph J. M. Bullowa, Esq., and Walter Rogers  
Deuel, Esq.; for the Russian East Asiatic Company,  
*et al.*

1600

*Anne C. H. Nyland*

Mr. Burlingham: In response to the request of the District Attorney, I produce from the office of the conference reports of transatlantic passenger movements for the calendar years 1906 to 1911 inclusive.

Marked Petitioner's Exhibits 154 to 159 inclusive.

Mr. Burlingham: Will you kindly let me know what minutes you want? I tried to get all.

Mr. Dorr: All minutes from 1908 down to 1910.

1601

Mr. Burlingham: Yesterday I produced in response to the request of the Government, from the office of the conference, minutes of the American Atlantic Conference for 1910 and stated that there were no minutes of the Continental or North Atlantic Conference for that year or the previous year. I now produce in response to the request the minutes of the American Atlantic Conference for 1908.

Marked Petitioner's Exhibit 160 for identification.

Mr. Burlingham: I also produce minutes of the Continental Conference for 1908, consisting of numbers 172, 173 and 174.

1602

Marked Petitioner's Exhibit 161 for identification.

A. C. H. NYLAND recalled:

*Direct-examination continued by Mr. Dorr:*

Q. Now, Mr. Nyland, I think you testified yesterday that the rate from the port of Hamburg to the territory from which the bulk of the North Atlantic immigrant traffic movement came was less than from the port of Rotterdam? A. Yes, sir.



Q. So that when the fighting ship made a rate to Hamburg which was nominally the same as the rate of an independent line to Rotterdam, the fighting ship of the Conference Lines had the advantage of the lower inland rate to the territory from which the bulk of the North Atlantic steerage traffic was drawn? A. In case the ocean rates of the outside lines were nominally the same as the others; yes, sir.

Q. So that in effect the putting on of the fighting steamer with a rate to Hamburg which was nominally the same as that of the independent line to Rotterdam, the fighting steamer was in effect cutting under the Rotterdam rate, was it not?

1604

The Witness: Will you read the question?

Q. (Question read.) Cutting under the independent line rate? A. In the announcement of rates, yes.

Q. Now, I understood you to testify yesterday, Mr. Nyland, that you regarded it as unfair to the public that different members of the public might travel on the same ship, having paid a different rate for that transportation? A. I do not think it is right.

Q. You do not think it is right? A. No, sir.

Q. Now take one of your so-called fighting steamers; its sailing is ordinarily announced, is it not, with the ordinary rate say \$30 or \$35 or \$33.50; you book passengers under that rate, do you not? A. Sometimes; yes, sir.

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Q. Now when you cut the rate, when it was appointed as a fighting steamer and you cut the rate we will say to \$27, you booked passengers for that steamer for that rate, did you not? A. Yes, sir.

Q. And if you make a still further cut say to \$23 or to \$21, you book passengers at that rate, do you not? A. Yes, sir.

Q. So that you, yourself carry on the same steamer, passengers who have booked at different rates? A.

1606

*Anne C. H. Nyland*

To the best of my recollection we have always refunded the difference.

Q. You always have? A. Refunded the difference.

Q. That is you have always refunded the higher rate to the passenger; are you positive about that, Mr. Nyland? A. Well, as far as I can go, as far as my memory serves me.

Q. Have you data which will show whether or not that is a fact? A. I cannot recall that, sir.

Q. Well now, these fighting ships are as you have testified, a semi-monthly occurrence are they not? A. Yes.

1607

Q. If you were in fact accustomed to refund any excess over the lowest rate charged on those particular ships, would it not be a matter of record and a record which could readily be produced? A. Not always, no; a refund may be made in cash, while also a cash entry has been made for the original sale.

Q. Where do you refund, to whom? A. Usually to the passengers; sometimes to the agent.

Q. When do you refund? A. When the fare is claimed.

1608

Q. Do you inform the passengers that they can have that refund if they claim it, or do you only refund in case some particularly energetic passenger makes a claim? A. Generally the passenger knows from the other passengers what the rate is they pay, and then usually a claim is made and in such a case the difference is refunded.

Q. All you mean is that if the passenger makes the claim, then you make the refund? A. Yes, sir.

Q. But you take no steps to insure that the passenger shall get a refund, by going to each passenger and making the proper refund? A. No, sir.

Q. You only pay claims if they happened to be presented? A. Yes, sir.

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1609

Q. And if they do not happen to be presented, you keep the money? A. Yes, sir.

Q. Keep the excess? A. Yes, sir.

Q. Now, I show you a letter under date of September 4th, 1908, which purports to be initialed by you, Exhibit 102, and I call your attention to the first paragraph of that letter, and that is an illustration or recalls an illustration, does it not of the situation which I have been examining you about? A. Yes, sir.

Q. In that case the Staatendam had been appointed as a fighting ship, had it not? A. Yes, sir.

Q. Forty-six of the third class passengers have been booked at the \$32 rate? A. Yes.

Q. The others were all booked at the \$23, were they not? A. Yes, sir.

Q. Now do you recall whether you refunded the excess for the difference between the \$23 rate and the \$32 rate to the passengers? A. Very likely we have not refunded the difference.

Q. When a fighting ship was appointed was any notice sent to the agents when that ship had been booked to its capacity? A. In case we knew; yes, sir.

Q. Can you give me any instance when that was done? A. No, sir.

Q. If you find any instances hereafter, Mr. Nyland, please call them to our attention, so that they may be recorded on the record? A. Yes.

Q. As a matter of fact the fighting steamers frequently booked more than their capacity, did they not? A. Yes, sir.

Q. In that event what did you do with the surplus passengers who had been booked for the fighting ship? A. Passengers booked in excess of the capacity of the fighting steamer, so-called, were transferred to another steamer.

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*Anne C. H. Nyland*

Q. Were transferred to another steamer? A. Yes.

Q. Sometimes that steamer was a steamer of a different line, was it not? A. Yes, sir.

Q. Now on that steamer there would be, would there not, passengers proceeding at the regular rate advertised for it and also passengers had been booked at the lower rate, which had been announced for the fighting ship? A. Yes, sir.

1613

Q. Now, when did you say that the appointment of fighting ships, the selection of fighting ships in New York was discontinued, or if you prefer to use the word, when did New York cease to suggest the particular fighting ships which should be employed? A. To the best of my remembrance in the beginning of 1910.

Q. Do you recall whether or not that was coincident with certain investigations which the Government was then making into the conduct of your line and other lines?

Mr. Spooner: Objected to as immaterial, irrelevant and incompetent.

A. It may have been the cause of it, but I don't know.

1614

Q. Well you do recall, do you know, that it was just after that time that the defendant Adrian Gips was about to be tried in the Federal Courts, for the so-called commissions or allowances, allowed by the railroads for freight being forwarded by your lines?

Mr. Spooner: Same objection.

A. Yes, sir.

Q. And was it not just at that time that certain of the correspondence, original letters received from the Holland office, was obtained by the Government

*Anne C. H. Nyland*

1615

through the service of a subpoena, as it was in course of shipment out of the country?

Mr. Spooner: Objection renewed.

A. Yes, sir.

Q. Well now, do not those incidents refresh your recollection as to the facts that this discontinuance of the appointment of fighting ships was coincident with the Government obtaining these letters which have now been offered in evidence and its investigations into the Holland-Amerika Line?

Mr. Spooner: I object to this testimony and to a continuance of these questions and move to strike out the answers. 1616

A. Not necessarily. At that time several investigations were pending and it may be not knowing whether perhaps sooner or later the lines would be asked explanations, I think that was one of the reasons why the fighting ship committee was dissolved.

Q. Wasn't it one of the reasons why it was dissolved, that it was considered desirable that persons in this country and within the jurisdiction and subject to the processes as witnesses, should not know too much about the details of that transaction?

Mr. Burlingham: Objected to. 1617

A. No, not exactly.

Mr. Spooner: I think the question is improperly formed.

Mr. Dorr: If you object to the form, I will change it. I think the substance of it is the proper subject of inquiry. Now the witness has already answered "not exactly." I do not think I will withdraw the question. I will let him tell just what he means when he says, "not exactly."

*Anne C. H. Nyland*

1618

Q. What did you mean when you said "not exactly"? A. An investigation always causes a great deal of trouble, annoyance and loss of time to the parties who have to submit to it.

Q. And for the officers of the line who were on this side of the ocean, who were not directly concerned in the appointment and selection of fighting ships, it would be more difficult for the investigators to determine the facts as to them, would it not? A. I don't think that was the reason why it was stopped.

Q. You do not think that had anything to do with it? A. No, I don't think that is so.

1619 Q. You think it was then just a coincidence that it stopped about the time that the Government was investigating? A. There was a possibility that the Government might find fault with this committee.

Q. You have had an intimate knowledge, part of your duty was it not, to have an intimate knowledge of the passenger movement of the various Atlantic Lines? A. Fair knowledge; yes, sir.

Q. Now the Mediterranean lines are, are they not natural competitors of the North Atlantic Lines for certain of the business from central Europe and south and southeast of Europe? A. Partly.

1620 Q. Have the Mediterranean lines uniformly been in competition with the North Atlantic lines for this traffic, to which they are natural competitors?

Mr. Bullowa: I object to that, because there is no allegation in the bill of complaint regarding the Mediterranean lines. It is only the North Atlantic Conference that is mentioned in the bill, and I object further upon the ground that the question calls for a conclusion.

Mr. Dorr: The Government's position on this point is that the agreements under which the defendant lines were operating tended to

result in a monopoly of the steerage traffic for certain territories and that it is relevant to the issues to determine whether or not as the result of agreement of the defendant lines what the competition was which they would naturally have sustained from Mediterranean lines?

Mr. Bullowa: Do you not think, Mr. Dorr, in view of that statement, that you ought to re-frame your bill?

Mr. Dorr: That may be a matter for the Court that I cannot pass upon.

Mr. Spooner: It is a matter for the Court to determine whether you have a right to take that position.

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Mr. Dorr: Surely.

Mr. Spooner: It is objected to on the further ground that it is irrelevant, without the issues made by the pleadings and incompetent.

Mr. Bullowa: I think now it would be only fair that we report the suggestion on the record and if the Government desires to go into these extraneous matters, that the bill of complaint be reframed before the testimony is taken.

Mr. Dorr: I think nothing is extraneous which tends to show that the defendant lines were in a position to make arbitrary rates as to the North Atlantic steerage traffic. You may answer.

1623

The Witness: What is the question?

Q. (Question read.) A. No, I don't think so.

Q. Now, Mr. Nyland, taking the period with which you have been familiar, from 1893 until the present time, what part of that period if any have the Mediterranean lines competed for the eastern Europe and southeastern Europe and central European steerage

1624

*Anne C. H. Nyland*

traffic for which they are natural competitors with the North Atlantic Lines?

Mr. Spooner: Same objection.

A. Have to look at the records to give you the exact dates, but I know that there has been a time when the Mediterranean lines were competing for south European business.

Q. Do you recall whether there was a period between 1906 and 1909 when you were doing that? A. May be; yes, sir.

1625

Q. Do you recall whether during that time there was any change in the Mediterranean Conference, in the membership of the Mediterranean Conference? A. I don't think during the controversy with European lines there was any conference.

Q. You do not think there was any conference during that time? A. No.

Q. There was open competition at that time between the various lines having service to the Mediterranean, not only among yourselves, but also with the North Atlantic lines, for such steerage business as was naturally competitive between the North Atlantic lines and the Mediterranean lines? A. No, sir; you used the expression "naturally competitive." Will you tell

1626

what business you refer to?

Q. Would you not regard that territory from which the rail rates to Italian ports were equal or less than the rail rates to the North Atlantic ports, as territory in which the Mediterranean lines would be natural competitors of the North Atlantic lines? A. The rate is not only the only reason for making or forming a competitive territory.

Q. That is one reason, is it not? A. Yes, sir.

Q. Where there was that situation as to the rates, you would say that in that territory at any rate they



would be natural competitors, would you not? A. Might have been competition; yes, sir.

Q. In the absence of some agreement between the lines, competition would normally result, would it not, in such territory? A. Not necessarily; no, sir.

Q. If we will say there is territory in southeastern Russia where the rail rates to Italian ports and the rail rates to the North Atlantic were substantially the same and there was no agreement or understanding between a line running to the North Atlantic ports and a line running to the Mediterranean ports, would there not ordinarily in the absence of some other circumstance which we have not taken into consideration, be competition between those lines for that traffic in that territory?

1628

Mr. Spooner: I object to the question as assuming a state of facts not proven and as entirely too indefinite to permit of an answer.

A. The conditions are so entirely different between the ships sailing to the Mediterranean and to the North Atlantic, that even if the fare to the North Atlantic ports would be a little higher, passengers would prefer going by North Atlantic steamers.

Q. Then take the territory in which the fare to the Mediterranean ports is slightly or somewhat less than to the North Atlantic ports, in such circumstances there would normally be competition between the North Atlantic lines and the Mediterranean lines, unless there was some agreement between them? A. Competition has never been—

1629

Q. Can you answer that question yes or no, Mr. Nyland, if not, make any explanation you desire? A. I cannot fully answer that question yes or no.

Q. Then answer it any way you see fit? A. In the same way as I said a moment ago in regard to the

1630

*Anne C. H. Nyland*

North Atlantic ports, so it is also true that many passengers paying a higher rate of fare in order to take a Mediterranean ship, will take the Mediterranean line in preference to the North Atlantic line.

Q. You mean there is a preference for the Mediterranean line? A. On account of the ships themselves.

Q. You mean there is a preference for the Mediterranean line or North Atlantic line? A. That offsets each other more or less.

1631

Q. Is the preference for the North Atlantic line or for the Mediterranean line? A. That depends altogether upon the passengers booked, upon the class, nationality and everything else.

Q. Well, during the period when the Mediterranean Conference was suspended, there was, was there not, as a matter of fact, competition in the territory in which the rates to the Mediterranean ports and the North Atlantic ports were substantially the same? A. Yes, sir.

Mr. Beers: Are you now enquiring as to the period covered by the existence of the conference or before?

1632

Mr. Dorr: I think the period overlapped as I understand it, the Mediterranean Conference was not reformed until 1909, was it Mr. Nyland?

The Witness: It may have been, I do not know.

Mr. Bullowa: Of course, all of this is subject to the same objection as to the conference?

Mr. Dorr: Yes; all during the competitive period.

Mr. Beers: And when you refer to the Mediterranean Conference, you are not referring to any sub-agreements under "AA"; you are referring to an arrangement entirely anterior and during the time of the "AA"?

*Anne C. H. Nyland*

1633

Mr. Dorr: The Mediterranean Conference. What I am referring to are the agreements which resulted in the formation of the Mediterranean Conference, some of which antedated "AA" and some of which as I understand it came into being later than "AA."

Q. During the period when there was the competition between the Mediterranean lines and the North Atlantic lines for steerage business there was an active competition, was there not, between those lines or certain of them for the steerage traffic from southeastern and central Europe? A. What do you call central Europe? How far do you draw that limit? According to the fare to the port?

1634

Q. According to the fare to the port; the points from which the fare was substantially the same; put it that way? A. Yes, sir; very active competition.

Q. Now, is there at the present time such active competition? A. No, sir; not that I know of.

Q. And roughly speaking when did that competition terminate? If you find you have made any error in the date, Mr. Nyland of course, you will be given an opportunity to correct it; I just want your best recollection? A. I could not tell you the date or about the time when it was terminated, as our company was very little interested in that Mediterranean business, but to the best of my remembrance it must have been about 1908.

1635

Q. Do you recall whether or not during this period when there was this competition for the Mediterranean business, whether or not the rates were the same as they are at the present time? A. I think they were lower.

Q. Substantially lower, were they not? A. Very likely, sir.

1636

*Anne C. H. Nyland*

Q. Now, in regard to the agents which were employed by the conference lines, were there what is known as general agents? A. Yes, sir.

Q. What commission did the general agents receive? A. On what class of business?

Q. On third class business? A. Usually in cases where they were working on commission basis, \$1.

Q. That \$1 was in addition to the \$2 which was paid to the sub agent? A. Yes, sir.

Q. And did they ordinarily work on the commission basis? A. Not all; some of the lines had their own offices.

1637

Q. Now, in regard to the enforcement of the rule 9 of the conferences, in regard to the employment by independent lines of conference agents, is it not true that you felt that that was a course of business which it was desirable should not become known to the public?

Mr. Beers: That is objected to as quite irrelevant and immaterial.

A. Will you please tell me what you refer to?

Q. I want you to give me your recollection. You remember rule 9, do you not, of the conference, in regard to forbidding conference agents to take the agency of independent lines? A. I did not know that.

1638

Mr. Dorr: That is rule 9, is it not, Mr. Burlingham?

Mr. Burlingham: Yes.

Mr. Spooner: Why do you give it a number? Why don't you characterize it?

Mr. Dorr: That rule of the conference lines—

Mr. Burlingham: Mr. Shipman says it is rule 9.

*Anne C. H. Nyland*

1639

Mr. Dorr: I am quite sure it is. It is in evidence. I have not the document at hand, but I am quite sure it is that.

Q. Do you recall, Mr. Nyland that you felt that that rule was of such a character that its importance should not be given publicity? A. I don't know that any of the public was especially interested in this rule.

Q. I show you the letter under date of September 7, 1906, which I think is not yet in evidence, which purports to bear your initial, being a letter press copy of the letter from the Holland-Amerika Line in New York to the home office, and ask whether that is in fact your initial (handing witness letter)? A. There is no question about that, yes, sir.

1640

Mr. Dorr: I will offer this in evidence, letter of September 7, 1906.

Mr. Beers: I note the same objection as to the other Holland-Amerika Line letters. It is incompetent.

Letter marked Petitioner's Exhibit #162.

Q. You state in this letter, or purport to state in this letter: "We fully believe with you that the steamship companies could follow up with good results their different cases in which unauthorized persons sell orders in Europe. However, it remains a question whether this course is advisable. Similar matters if brought before a court may easily lead to further investigation of the present methods employed by the steamship companies which in many respects would cause unsatisfactory results. The course followed by the steamship companies in their different meetings to maintain control of the agents under their supervision is in many ways very arbitrary, and although from a steamship company's standpoint justifiable may be condemned if brought before an investigation com-

1641

1642

*Anne C. H. Nyland*

mittee. For this reason we think it is very desirable to proceed slowly." Now, what were the methods that you were referring to there, Mr. Nyland? A. To the rules of conference.

Q. And to the rule 9, or the rule which forbade conference agents from acting for independent lines; is that one of those rules which you had in mind? A. That may be that that was included; yes, sir.

*CROSS-EXAMINATION by Mr. Burlingham:*

1643

Q. I just want to ask one question. Where were the meetings of the small committee held? A. At various places, usually in the office of one of the committee members.

Q. In the conference rooms? A. It may have been in the corner of one of the rooms.

Q. That is at 17 State Street? A. Yes, sir.

1644

Q. When I interrogated you yesterday, I understood you to say that your commission was invariably \$2, and yet on Mr. Dorr's examination referring to a letter I understood you to say that in the case of the Estonia, I think it was, there was an extra commission. Do you know of any other cases when that was done? A. I was really surprised to see the letter. It had entirely escaped my memory.

Q. Your memory was refreshed by it; you have no doubt it is true, have you? A. It is very likely, because the letters written show at that time that it would be true.

Q. When I asked you about it you did not remember the Estonia, did you? A. When you asked me?

Q. Is your memory so refreshed that you can tell the circumstances of that affair of the Estonia? A. The actual commission which according to the letter had been paid may have been caused in order to follow

*Anne C. H. Nyland*

1645

the same tactics that the Northwest Transport Line used in paying their commissions, but that was not the rule.

Q. What I want to know is whether your memory is so refreshed that you can give an account of it, or is it merely a theory of yours? A. Yes, sir.

Q. Which? A. That this extra commission was offered in order to induce agents to book for the steamer.

Q. Now, do you recall any other cases? A. Not at present, no, sir.

Q. And you say you were surprised to find that it was the fact with regard to the Estonia, you had forgotten it? A. I had forgotten all about it, sir.

1646

Mr. Burlingham: That is all.

*RE-DIRECT EXAMINATION by Mr. Dorr:*

Q. You would not now after having your attention called to the Estonia incident, you would not now say that there were not other incidents? A. I was greatly surprised to see this, but I only know that where it was done it is an exception.

Q. You would not now say that it was the only exception, would you? A. You can draw your own conclusions, Mr. Dorr.

1647

Q. I want to find out now as to the positiveness of your recollection? A. I was very positive when I made the answer to Mr. Burlingham.

Q. Are you equally positive now that you have found your recollection in that regard to have been in error, that there was not other instances of that same character? A. There may have been.

Q. It was a regular thing, was it not, to allow this additional commission of \$1 to your general agents?

*Anne C. H. Nyland*

1648

A. To our general agents; yes, sir, who worked on a commission plan.

Q. So that as a matter of fact it was not your invariable rule only to allow a \$2 commission as you stated to Mr. Burlingham yesterday, but it was the regular course of business as to certain New York agents, namely, your general agents, to allow them a \$1 commission in addition to the \$2 commission which you allowed to their sub-agents? A. No, but the regular agents are not what we call agents; I think we have only one general agent working on a commission basis in this country.

1649

Q. Who is he? A. That is at that time. Mr. Houghton in Boston; and he is not what we call a regular booking agent.

Q. He had sub-agents? A. Yes, sir; sub-agents to do the steerage work.

Q. His sub-agents get \$2? A. Yes.

Q. And he gets \$1 for every ticket sold through him by his sub-agents? A. Yes, sir.

Q. As to the other general agents do they receive any compensation for the sale of tickets through their sub-agents? A. No, they get a fixed salary.

Q. They get a fixed salary? A. Yes, sir.

1650 Q. So that as a matter of fact there is paid by the lines a larger compensation for the sale of the steerage tickets than the \$2 which is paid to the actual booking agent? A. If you will put it that way; yes, sir.

Q. And in addition to the so-called commission or the commission which you paid to your booking agents you also allowed them a certain portion of the so-called commercial allowance which you claimed from the railroads, did you not? A. Yes, sir.

Mr. Dorr: That is all.

Mr. Burlingham: That is all.



*Paul G. Fourman*

1651

PAUL G. FOURMAN, sworn on behalf of the petitioner, testified as follows:

*Direct-examination by Mr. Dorr:*

Q. Now, Mr. Fourman, what is your business? A. I am passenger agent for the Uranium Steamship Company.

Q. How long have you been in the steamship business? A. Over six years.

Q. What was your first position in the steamship business and with what concern? A. As chief clerk for the Russian Volunteer Fleet in the office of C. B. Richard & Company.

1652

Q. In that position did you have anything to do with the steerage business of the Russian Volunteer Fleet? A. Yes.

Q. What were your duties in that regard? A. Corresponding with sub-agents and in general taking care of the passenger traffic.

Q. Was your employment by C. B. Richard & Company coincident with the establishment of the Russian Volunteer Fleet? A. Yes, sir.

Q. So that you were acquainted to some degree with the theory of the running of the line from its inception? A. Somewhat.

Q. Do you recall what steamers were in the fleet of the Russian Volunteer Line? A. Five steamers; Smolensk, Petersburg, Salratov, Kherson and Moscow.

1653

Q. Do you recall what trade these ships had been built for? A. They were built originally for the far eastern traffic between the Black Sea and Vladivostock.

Mr. Bullowa: I don't believe this witness knows this of his own knowledge.

*Paul G. Fourman*

1654

The Witness: Yes; of my own knowledge.

Mr. Bullowa: I don't think that information on the record is true, so I think before you let the witness testify as to these facts, you should show that he does know.

Mr. Dorr: I am satisfied that he knows them of his own information and knowledge.

Q. Now, as to the Moscow, was that a ship built the same way? A. No; the Moscow was originally the Fuerst Bismarck of the Hamburg-American Line.

1655

Q. Mr. Fourman, what route were these ships put on in the establishment of the Russian Volunteer Line? A. Libau to N. Y.

Q. Where is Libau, what part of Russia? A. Libau is on the Baltic Sea.

Q. Is that port near or within easy reach of a territory in which a large part of the North Atlantic steerage traffic originates? A. Not simply the North Atlantic, but the Russian.

Q. Which ordinarily goes by the North Atlantic province? A. Yes. Libau would cater only to Russian business.

Q. But the Russian business is a very large substantial part of the North Atlantic steerage traffic?

1656

A. It is, sir.

Q. Up to that time have there been any lines running from Libau direct to New York? A. No, sir.

Q. Did the steamers of this fleet touch any port on the voyage to New York and back? A. Rotterdam.

Q. Touch it both eastbound and westbound? A. Eastbound and westbound.

Q. This line engaged in the steerage traffic? A. Steerage and partly cabin and freight.

Q. What were the rates that this line established when it started in business? A. Do you mean the steerage rates?

*Paul G. Fourman*

1657

Q. The steerage rates? A. I don't remember exactly. I think they quoted \$37 to Libau, and \$31 to Rotterdam. It is a matter of record.

Q. Where is that record, do you know? A. I believe it is in the office of C. B. Richard & Company.

Q. Have you or your line any of those records? Now, do you recall whether or not at the institution of the service of the Russian Volunteer Fleet it met with any opposition steamers?

Mr. Beers: Objected to as leading; and as calling for a conclusion. Let him state facts, not inferences.

1658

Q. What is the answer, Mr. Fourman? A. I don't think at the very beginning.

Q. How many trips had been made so far as you can recall? A. I don't remember exactly.

Q. Do you recall whether or not the steamers of any other line engaged in service between Libau and New York touching at Rotterdam after the ships of the Volunteer Fleet had been put in that service? A. Yes, sir.

Q. What steamers? A. Steamers of the East Asiatic Steamship Company.

Q. Had that line prior to that time run any steamers in that service to your knowledge? A. Sir?

1659

Q. Had the East Asiatic Line run any steamers in the Libau service prior to the establishment of the service of the Russian Volunteer Fleet? A. No, sir; not prior to that time.

Q. Do you recall whether or not all the steamers which were put in that service were the steamers of the East Asiatic Company? A. I don't remember exactly, but I think one of them was the Courier.

Q. You misunderstand my question. Do you recall whether or not the Russian East Asiatic Line put

*Paul G. Fourman*

1660

on this service certain ships which up to that time had not been in the East Asiatic service? A. I don't know.

Q. Don't you recall, Mr. Fourman, that two ships, which had been formerly in the service of the Hamburg-American Line were put on that Libau service?

Mr. Bullowa: I object to that question as leading and in the second place it is cross-examining your own witness. He said he did not recollect and then you asked him the same question.

1661

Mr. Spooner: You stated on the prior examination that the three witnesses were hostile witnesses. Will you state this is not a hostile witness?

Mr. Dorr: I will state on the record that the line of which Mr. Fourman is an agent has insisted on only giving information under legal process. That is the case. I do not think that they are hostile in the sense that they intend to conceal anything, but they are not volunteering anything.

Mr. Bullowa: They have been conferring with you and suggesting the line of examination within the last two days, haven't they?

1662

Mr. Dorr: They have not been suggesting any line of examination. They have refused to answer questions which I have asked them, which I consider are pertinent to this matter, and they said they would not answer them unless they were asked in Court and compelled to answer.

Mr. Burlingham: Mr. Dorr, won't you answer the question? This is your witness, is it not?

*Paul G. Fourman*

1663

Mr. Dorr: This witness has been called in court in obedience to direction as the two previous witnesses were.

Mr. Burlingham: And thus far you do not regard him a hostile witness.

Mr. Dorr: I regard his recollection on this point as at fault and I am endeavoring to refresh it.

Mr. Burlingham: Does that make him hostile?

Mr. Dorr: I understand when a witness is examined and he does not recollect something the examiner may, whether the witness is hostile or not hostile, he may direct his attention to any particular point to refresh his recollection.

1664

Q. (Question repeated.) A. I don't know.

Q. You have no recollection on that point whatever? A. I don't know exactly whether the steamers did belong to the Hamburg-American Line or to any other line.

Q. Didn't you know that two steamers were put on the Libau service which had formerly been in the service of the Hamburg-American Line?

Mr. Bullowa: He has already answered that question, "I don't know."

1665

The Witness: I do know two steamers were put in the service, but whether they belong to the Hamburg-American I don't know.

Q. I understand that you don't know anything about the title of those steamers or the ownership, but were you not familiar with the fact that those steamers had been engaged prior to their being put on the Libau service in the service of the Hamburg-American Line, whether that line owned them or not? A. I don't know.

*Paul G. Fourman*

1666

Q. Didn't you tell me that Mr. Fourman? A. I could not.

Q. Did you testify to that before the committee in Washington? A. No; I did not.

Q. Mr. Fourman, were there not two steamers which were put on this Libau service which had not formerly been employed in the service of the East Asiatic Steamship Company? A. I do not know, Mr. Dorr, whether they belong to the Asiatic Steamship Company.

Q. You have answered that question? A. What is the question?

1667

Q. I am asking you whether there were not two steamers put on this Libau service immediately or shortly after the institution of that service which had not previously been employed in the Russian East Asiatic Steamship Company's service, irrespective of whether the Russian East Asiatic Company owned them or not.

Mr. Bullowa: If you know?

A. I don't know.

Q. Do you recall the names of the steamers which were run by the East Asiatic Company from Libau to New York? A. At that time?

Q. Yes? A. That is after the beginning of the Russian War?

1668

Q. When the service was instituted? A. I don't remember exactly, but I think it was the steamers Courier and Estonia.

Q. Were those the only steamers that were run in that service? A. I think there was the other steamer Latonia.

Q. Any others? A. I don't remember.

Q. Will you say that there were none? A. I don't know; I don't remember it.

*Paul G. Fourman*

1669

Q. Were all those steamers which had theretofore been employed in the service of the Russian East Asiatic Steamship Company? A. I could not tell you.

Q. What is your best recollection?

Mr. Bullowa: If you know.

Q. What is your best recollection; I am not asking you whether you know or not; I am asking you what your best recollection is on the point?

Mr. Bullowa: He has given his recollection.

A. The three steamers mentioned were then in the service of the Russian East Asiatic Steamship Company.

1670

Q. Had they theretofore been in that service or had certain of them been in the regular service of the Hamburg-American Line?

Mr. Bullowa: He has answered that already that he did not know.

Mr. Spooner: I object to that as leading.

Mr. Bradley: I object to the question as leading and cross-examining.

Q. Were those the only steamers employed in the service of the Russian East Asiatic Line? A. At that time.

1671

Q. You are sure of that, those were the only three?

A. I don't remember; but I remember the three.

Q. You are quite clear about that, Mr. Fourman?

A. Just after the beginning of the Russian Volunteer Fleet those are the three steamers that I remember; there were many others after that.

Q. Do you recall whether or not thereafter there were two steamers which had previously been in the service of the Hamburg-American Line? A. I don't know whether they were in the service of the Hamburg-American Line.

*Paul G. Fourman*

1672

Q. When you say "know," what do you mean, Mr. Fourman; do you mean you did not see them, were not on them when they had the officers of the Hamburg-American Line on them?

Mr. Spooner: I object to that as cross-examination of the Government's witness.

1673

Mr. Dorr: This witness has before a Congressional Committee partly been desirous of giving a free and full statement on this matter. I don't know what has caused an apparent change in his attitude. I propose to search his recollection and see whether I cannot find in it now things which previously were in it.

Mr. Burlingham: That is cross-examination.

Mr. Dorr: I claim that I have a right to do that where the witness has apparently forgotten things which he previously to the knowledge of the Government knows.

Mr. Bullowa: Perhaps at that time he was testifying to things that he did not know. Now, he realizes that he is in Court and that he has to testify only what he actually knows under oath.

1674

Mr. Dorr: He was under oath at that time, has been twice before. I don't think that testimony under oath is informal in the sense that a man is permitted to state things which are not true. I don't know of any such informality of a legal proceeding.

Mr. Bullowa: But he was not subject to cross-examination.

Mr. Dorr: I don't know that because the witness is not subject to cross-examination, therefore, he is entitled to state things which are not true. I believe his previous testimony has been true throughout.



*Paul G. Fourman*

1675

Q. Now, Mr. Fourman, what were the names of the steamers which subsequently engaged in this East Asiatic service? A. The Birma, the Russia, the Kursk, and the Czar.

Q. Those are the only ones of which you have any recollection? A. Yes.

Q. Now, Mr. Fourman, do you recall what rates were advertised by the Russian East Asiatic Line as against the sailings of the Volunteer Fleet? A. I don't remember the exact rates.

Q. What is your best recollection of those rates? A. They were similar to the Russian Volunteer Fleet, or at times lower.

1676

Q. And do you recall whether or not the rate to Libau made by the Russian East Asiatic Steamship Line was made lower than the rate originally established by the Volunteer Fleet? A. I don't remember.

Q. No recollection? A. No.

Q. Do you recall whether or not the Russian Volunteer Line reduced its rate below \$37.50 which you said was the rate which they had established? A. Yes; occasionally they reduced the rates.

Q. Was that to follow the rates of the ships the sailings for which had been set on the same date as the East Asiatic?

1677

Mr. Burlingham: Objected to as calling for a conclusion, and leading.

A. It must have been for that reason.

Mr. Bullowa: I move to strike out the answer about what must have been as a conclusion of the witness.

Q. Do you recall whether or not the sailing of the ships of the Russian East Asiatic Line were fixed for

*Paul G. Fourman*

1678

the same day as the sailings of the Russian Volunteer, at or about the same day? A. I don't remember.

Q. Do you recall whether or not a rate was made by the Russian East Asiatic steamers or other steamers from Rotterdam which was less than the \$30 rate established by the Russian Volunteer Line from that point? A. I do not remember the rates exactly.

Q. Now, Mr. Fourman, how long did the Russian Volunteer Fleet stay in existence or maintain its service? A. Two years.

Mr. Bullowa: It is still in existence, isn't it?

1679

Q. How long did it maintain its service? A. Between Libau and New York?

Q. Yes? A. Two years.

Q. And it discontinued its Rotterdam service at the same time? A. At the same time.

Q. Did you thereafter become connected with the New York and Continental Line? A. Yes.

Q. What were the ships of that line? A. Avoca, Jelunga and Volturno.

Q. Did the Avoca subsequently become the Uranium? A. Yes.

Q. When were these steamships put in service by the New York and Continental? A. Sir?

1680

Q. When were these steamships put in service by the New York and Continental? A. For the passenger or freight service?

Q. For the passenger and freight, both? A. I don't know—

Q. I don't mean exclusively for freight; I mean for passenger and freight? A. In 1908.

Q. How long did they continue in the service; how long did the service of the New York and Continental Fleet continue? A. I don't remember. I was on the other side when they discontinued the service.

*Paul G. Fourman*

1681

Q. Can you give me the date approximately? A. It was either in August or September, 1908.

Q. August or September, 1908? A. I am not sure.

Q. Do you recall whether or not while the New York and Continental was engaged in the service between New York and Rotterdam that ships of other lines sailed on the same sailing dates as the ships of the New York and Continental? A. Yes, other steamers sail the same day.

Q. Do you recall whether or not when a ship of the New York and Continental Line sailed some ship of some other company reduced its ordinary rate to a rate the same or lower than the established rate of the New York and Continental?

1682

Mr. Bradley: Objected to as leading and calling for a conclusion.

A. I don't remember whether the rates were reduced against the steamers of the New York and Continental Line, because at that time we had the Russian Volunteer Fleet in the same offices and rates were reduced both against the Russian Volunteer Fleet and the New York Continental, at times by more than one steamer of the other lines.

Q. But there always was some steamer of the other lines, one or more steamers of the other lines with a reduced rate? A. Yes; with a reduced rate.

1683

Q. What was the rate between New York and Rotterdam which was established by the New York and Continental Line when it entered upon the New York and Rotterdam service? A. I don't remember. It is a matter of record. I don't remember the exact date.

Q. Have you got those records? A. No; they would likely be in the office of C. B. Richard & Company.

1684

*Paul G. Fourman*

Q. What is your best recollection about it, if you have any recollection, Mr. Fourman? A. I don't think I remember the rate.

Q. You were the passenger agent at that time for that line? A. Yes; but my time was mostly taken up by the Russian Volunteer Fleet.

Q. You were passenger agent for the New York and Continental, were you not; that is, you had charge of the passenger work, did you not, Mr. Fourman? A. Yes; some of the work.

1685 Q. And the rate which was fixed for this traffic was, of course, vitally important in the getting of passenger business, was it not, for the line? A. Yes, sir.

Q. And you have no recollection whatever as to what that rate was? A. No, sir.

Q. It may have been \$60? A. No; it was not \$60, but I don't remember the exact rate we quoted at that time for the New York Continental Line.

Q. Approximately what was it? A. About \$28 or \$30.

Q. Substantially the same rate that was established originally by the Russian Volunteer Line? A. I think lower than the original rates of the Russian Volunteer.

1686 Q. What is your recollection as to whether or not there was any difference between the eastbound and westbound rates, or have you any recollection on that point? A. We did not book westbound passengers for the New York Continental Line.

Q. You did not have charge of the booking of that business? A. We did not book them at all in New York or in the United States.

Q. So that you are not familiar with the westbound rates? A. No, sir.

Q. You were referring to the eastbound rates when you fixed the figure at \$28 or \$30? A. Yes, sir.

Q. Did you have charge of securing agents for

*Paul G. Fourman*

1687

the Russian Volunteer Fleet and the New York Continental? A. Yes, sir.

Q. Did you experience any difficulty—what did you do in regard to agents for your lines, and what, if any, difficulties did you experience in securing them? A. I visited some of the agents who were engaged in selling steamship tickets for other lines and offered them the agency of our line.

Mr. Burlingham: Which line is this?

The Witness: The Russian Volunteer Fleet.

Q. Is that a part of the New York and Continental also? A. Yes.

Q. What was the result? A. Some of them refused to accept the agency or rather to accept the tickets for the reason that they were representing so-called conference lines and stated that it was one of the rules of the conference lines not to sell steamship tickets for independent lines.

1688

Mr. Bullowa: I move to strike that out as incompetent, irrelevant, hearsay and not the best evidence.

Mr. Dorr: It seems to the Government that where matters which are sought to be elicited by examination are matters of common knowledge which the witness learns in the ordinary course of business that the mere fact that some of that information is obtained from third parties does not vitiate his testimony.

1689

Q. What commission did you pay to the agents for the Russian Volunteer and the New York Continental Lines? A. \$3 on steerage business.

Q. Now Mr. Fourman, it has been suggested here by Mr. Nyland, the previous witness, on examination by the defendants that there was unfair competition on the part of the Russian Volunteer Fleet and the New York Continental because your lines as I under-

*Paul G. Fourman*

1690

stood it, gave larger commissions to agents. Those agents gave the public part of the benefit of those commissions. Will you state the reason why you paid \$3, rather than \$1 or \$2? A. That is, why we paid \$3?

Q. Yes. A. As against \$2 of the other lines?

Q. Yes. A. I don't know the reason why; we paid them \$3.

Q. Your agents were confined, were they not, to representing your line? A. I guess so.

1691 Q. Was it not one of the reasons why you paid that higher commission, in order to get agents who were compelled to act for you exclusively, you found that it was necessary to pay a higher commission?

Mr. Burlingham: Objected to as leading and argumentative, as cross-examination and as calling for a conclusion.

Mr. Bullowa: And cross-examining his own witness.

Mr. Dorr: I will stand on that question.

The Witness: What is the question?

1692 Q. Was not one of the reasons why you fixed a \$3 rather than a \$2 commission, the fact that because of the rules of the conference, your agents would be confined to representing your line alone? A. Yes, that was one of the reasons.

Mr. Burlingham: Same objection.

Mr. Bullowa: I move to strike out the answer.

Q. Did you experience any difficulties in securing agents?

Mr. Bullowa: Objected to.

A. In securing new agents or in securing agents who had already been engaged in the sale of steamship tickets?

Q. Agents who were experienced in the steamship business? A. I stated before, that agents who were selling tickets for other lines refused to accept the agency of our line.

Q. Did you experience any difficulty in the sale of tickets of your line in the steerage business because of representations which were made by the agents of the conference lines as to the character of the ships of your line and the way in which they were run?

Mr. Bullowa: Same objection as to the form of the question; it is leading and suggesting an answer to the witness.

1694

A. I don't quite understand your question.

Q. (Question read by stenographer.) A. Some of the conference agents were advising passengers who would ask for tickets of the Russian Volunteer Fleet that the steamers were not fit to travel on.

Mr. Beers: I move to strike that out as not responsive.

Mr. Dorr: I offer this and propose to connect it with a letter which is already in evidence from Mr. Richard to the conference lines giving to those conference lines a notice that their agents were engaged in this practice, a letter which, as I understand it, the conference lines never made any answer to.

1695

Mr. Beers: I do not understand that either Mr. Richard's letter or this witness's statement is any proof as to any facts.

Mr. Burlingham: My point is whether it is of his own knowledge he is testifying to.

Mr. Dorr: I appreciate that Mr. Beers, that mere fact that Mr. Richard wrote a letter stating that certain things were being done by conference agents is no proof that they were being

*Paul G. Fourman*

1696

done, but the fact so far as can be ascertained, the conference lines made no effort to ascertain whether or not those charges were true and ignored the letter which contained those charges, seems to me to be admissible as significant of the intent and attitude of the conference lines on this matter?

Mr. Beers: But as I recall that letter, it was to a certain extent, abusive of the lines. If so, it is perfectly natural a business man might resent something he considered a rather undignified attack on him.

1697

Mr. Dorr: I am saying the possible source of Mr. Richard's knowledge.

Q. Did you report these matters to Mr. Richard?  
A. Yes, sir.

Q. What was the source of your information on this point? A. Well, I just heard so from our own agents.

Mr. Burlingham: Now, we move to strike it out as purely hearsay.

Mr. Bullowa: I would suggest, Mr. Dorr, that you let him specify any particular agent he heard it from, so we can place the source of this hearsay.

1698

Mr. Dorr: I think this is no more hearsay than Mr. Nyland's testimony yesterday to the fact that people had told him that the rates of the Uranium Line were so and so, certain figures. I think in most cases it is proper to go into these matters and the Court will give such weight to this evidence as it desires.

Mr. Bullowa: I make the suggestion, Mr. Dorr, that you ask him in particular where he derived this hearsay from, what particular person, so we can follow it out.



Mr. Dorr: You may cross-examine him as much as you desire, Mr. Bullowa.

Q. Now, as to the New York Continental Line that went out of business; did you subsequently enter the employ of the Northwest Transport Company? A. Yes, sir.

Q. When was that? A. 1909.

Q. What were your duties in connection with the Northwest Transport Company? A. Same as with the Russian Volunteer Fleet and the New York Continental Lines.

Q. What were the ships of the Northwest Transport Company? A. The Uranium, Volturmo, Raglan Castle, the Napolitan Prince, the Sicilian Prince and the Campania or Campanello. 1700

Q. Between what ports did these steamers ply? A. Between Rotterdam and New York, touching Halifax, Nova Scotia.

Q. Do you recall the rates which the Northwest Transport Company established for the New York-Rotterdam service? A. At the very beginning?

Q. Yes? A. I don't remember the exact rates.

Q. Take the eastbound service first; what was the rate of the eastbound service, as nearly as you can recollect? A. About \$30. 1701

Q. What was the westbound rate? A. \$36.

Q. Do you recall whether or not a steamer or steamers of other lines sailed on the sailing dates set for the steamers of the Northwest Transport Company? A. Yes.

Q. And reduced their rates to a figure lower than the regular rates for such steamers and lower than the regular rates of the Northwest Transport Line?

Mr. Beers: Objected to as leading.

A. Yes, sir.

*Paul G. Fourman*

1702

Q. You do recall whether they did or not? A. Yes.

Q. But that was done, is that your recollection?

A. That on the same date, when a steamer of the Northwest Transport sailed, there would be a steamer of some other line with a reduced rate, that is, reduced from their original rate.

Q. Reduced to a point lower than the regular rate of the Northwest Transport Line?

Mr. Burlingham: Objected to as leading.

1703 Q. How did their rate as reduced, compare with the regular rate of the Northwest Transport steamers?

A. What is the question?

Q. How did the rate to which the rate of the steamers of the Conference Line compare with the regular rate of the North West Transport Line? A. The reduced rate of the Conference Line compare with the original rate?

Q. The North West Transport? A. Well, they would reduce the rate a dollar below our original rate.

Q. Now after such reduction by the Conference Line steamers, did you find it necessary or did you reduce your rate then too? A. Yes, sir.

1704 Q. And on the reduction of your rate, what if anything was done by the Conference Line steamers as to rates? A. Sometimes they followed with another reduction.

Q. Was that their ordinary practice? A. Not on all sailings.

Q. On what sailings did they not do that? A. I cannot exactly state, but on some of them they didn't.

Q. You mean there were individual instances where they did not do it?

Mr. Bullowa: I object to that.

A. Just one reduction would take place.

Q. Now, what was the ordinary practice?

*Paul G. Fourman*

1705

Mr. Burlingham: If they had any?

A. They would send out circulars to their agents a week or sometimes eight or nine days before the sailing of the steamer, announcing a reduction in rate for a particular sailing, on the date when our steamers would sail.

Q. And in the event that you reduced your rate to meet that rate what would the Conference Line steamers do in the ordinary course? A. They would then send out another reduction, another circular, announcing a further reduction. That would take place about five days before the sailing of the steamer.

1706

By Mr. Bullowa:

Q. Are you testifying as to what you know? Do you know these things or are they hearsay? A. I know these things.

By Mr. Dorr:

Q. It was part of your business; was it part of your business to ascertain not only the rates of your own line, but the rates of other lines? A. Yes, sir.

Q. Did you inform yourself of the public rates of the various lines as well as your own? A. Yes, sir.

Q. To what point were rates reduced by the Conference Line steamers and your steamers? A. Do you mean comparative?

1707

Q. Between New York and Rotterdam? A. Well, sometimes they were as low as \$21.

Q. How long did the North West Transport Line continue in business? A. From February, 1908, until April, 1910, I think, or 1909.

Mr. Beers: From February, 1908.

The Witness: From February, 1909, pardon me, I will have to recollect that. February, 1909, I think, until April, 1910.

*Paul G. Fourman*

1708

Q. Now, after that time did you enter the employ of some other steamship company? A. The North West Transport Line was succeeded by the Uranium Steamship Company, same steamers, Uranium steamers.

Q. Did they have the same steamers then? A. Yes, sir.

Q. What were your duties with the Uranium Line? A. Same as before.

1709 Q. What, if anything, was done by the steamers of the Conference Lines as to sailings and rates on the sailing dates of the steamers of the Uranium Line? A. Similar to the previous tactics.

Mr. Beers: I object to the witness characterizing the acts of the other lines and move to strike out the answer.

Q. Now, as to your agents, what was the situation with regard to obtaining agents for the Uranium Line? A. Similar to those as with the other lines.

Q. That is, you experienced the same difficulties? A. Same difficulties.

Q. How about your commissions; what were your commissions for the Uranium Line or for the North West Transport? A. \$3 and sometimes \$4.

1710 Q. Was the commission of \$4 paid to all agents? A. No, sir, to some agents, the general agents and to agents who were doing a larger amount of business.

Q. Do you recall any occasions on which the steamers of the Conference Lines did not cut their rates on the sailing dates of the steamers of the North West Transport and the Uranium Line? A. There were one or two cases.

Q. Do you recall in the early part of 1910 or 1911 that that occurred? A. I don't remember.

Q. You have no recollection whether at the beginning of 1910, there were not several sailings, two

*Paul G. Fourman*

1711

sailings successively when the Conference Lines did not oppose your steamers with a competitive steamer? A. I don't remember whether it was at the beginning of 1911, but I do remember that it was at the beginning of 1912.

Q. Beginning of 1912? A. Yes, sir.

Q. When that was done, did you reduce your rates below the regular rates? A. Not necessarily.

Q. Did you? A. I don't remember.

Q. Have you any papers which would show? A. I think the circulars will show.

Q. Now, at that time from the fact that two or more sailings had gone by, in which you were not opposed, did you not alter your instructions to your agents and endeavor to insure that your agents would not sell below your published rates? A. Yes, sir, I did.

1712

Q. What steps did you take with that end in view? A. I have sent out letters and telegrams to agents, advising them that they should sell at the original rates quoted by us and that we will not accept passengers at a lower rate.

Q. Thereafter, was there a return to the previous situation, where Conference ships sailed in opposition to your ships? A. Yes, sir.

Q. Where the Conference ships cuts the rates below your regular rates? A. Yes, sir.

1713

Q. Is that still the situation? A. Yes, sir.

Q. What is the most recent instance of it? A. The last steamer of our line which sailed from New York was the Uranium, that was on the 20th of June. The steamer which sailed in opposition to ours was the Cleveland.

Mr. Beers: I make the same objection. The witness is stating a conclusion. I move to strike out the answer.

*Paul G. Fourman*

1714

Q. What line is that? A. Hamburg-American Line.

Q. And did the Cleveland advertise for that sailing a lower rate than its regular advertised rate? A. Yes, sir.

Q. Do you recall what rate it advertised? A. Originally.

Q. Original rate, yes? A. I think \$35.

Q. What was the rate which it advertised on the sailing of the Uranium? A. \$25.

Q. Now, do you recall whether or not there were any instances where your ship did not sail on the advertised sailing date? A. Yes, sir.

1715

Q. Do you recall any instance of 1910? A. I don't remember.

Q. Of dates, open sailing dates of the Uranium? A. What part of the year, what month?

Q. January, 1910? A. If you have the circulars I might recall some of them.

Q. Now, I show you certain papers and ask whether those will refresh your recollection?

Mr. Bullowa: Which papers are they?

Q. I show you such papers which I will have marked collectively if you desire, exhibit for identification?

1716 A. I see a circular advertising the sailing of the steamer.

Q. Do not testify from the circular. Does an inspection of those circulars refresh your recollection as to whether there was an occasion in the winter of 1910—

Mr. Beers: Have you identified those circulars?

The Examiner: Defendants' Exhibit 1, for identification and Petitioner's Exhibit 90.

Q. Now do you recall whether or not in the winter of 1910, that the sailing dates of the steamship Uran-

Paul G. Fourman

1717

ium were postponed? A. I recall that the steamer Uranium which was originally advertised to sail on January 15th, was postponed to January 18th.

Q. Now do you recall whether or not a steamer of the Conference lines was advertised to sail on January 15th, the original sailing date of the Uranium steamer Graf Waldersee, have you any recollection about that? A. No, I don't remember what steamer sailed on that date, or was scheduled to sail on that date.

Recess taken until 2:00 o'clock P. M.

1718

Afternoon session.

PAUL G. FOURMAN, recalled:

*Direct-examination continued by Mr. Dorr:*

Q. Now, Mr. Fourman, I show you what purports to be a steerage and third cabin circular No. 1, under date of January 3rd, 1910, of the Hamburg American Line.

Mr. Spooner: Will you let me see that?

Mr. Dorr: Yes, certainly. I offer the same in evidence. 1719

Marked Petitioner's Exhibit No. 163.

Q. I show you what purports to be a circular of the North West Transport Line, concerning the sailing of the steamer Uranium, Saturday, January 15th, 1910, and fixing a steerage rate to Rotterdam at \$25, Antwerp \$26, Bremen \$27, Hamburg \$28, and ask whether that is a circular of the Northwest Transport Line? A. It is.

1720

*Paul G. Fourman*

Mr. Dorr: I offer that in evidence.  
Marked Petitioner's Exhibit No. 164.

Q. Now, at the time that that circular was issued, Mr. Fourman, what was the regular eastbound rate to Rotterdam of the steamers of your line? A. I have not seen that circular of our line; \$25 to Rotterdam; \$28 to Hamburg.

Q. Now, do you recall what the regular rate of the Hamburg-American Line was at that time? A. \$35.

1721 Q. I call your attention to Government Exhibit No. 85, which purports to be a circular, advertising the sailings and rates by the steamer Graf Waldersee of the Hamburg-American Line, showing a rate of \$35 to Hamburg? A. Yes, sir.

Q. And ask whether that was in accord with the regular published rates of that line as you were familiar with them at that time? A. Yes, sir.

Mr. Spooner: You mean to say that was the steerage rate of that time?

The Witness: Yes, sir, \$35.

Mr. Dorr: As I understood, you admitted that that was the advertised rate.

1722 Mr. Spooner: What I admitted was a white circular. I admitted this was published, but I denied its accuracy as to the \$35 rate for steerage.

Mr. Dorr: Well, as I understand it, you admitted that this particular advertisement of the sailing of the Graf Waldersee, containing an advertisement of the steerage rate of \$35 to Hamburg, printed January 15th, 1910, was actually issued by that line.

Mr. Spooner: This has been introduced in evidence. Qualify it in the record; the defendant will admit it. Of course, you cannot use my admission except as it is qualified.



*Paul G. Fourman*

**1723**

Mr. Dorr: Then I will not attempt to use your admission, Senator, and you may strike out the admission.

Q. I show you this circular, Mr. Fourman, and ask you whether that is a circular which you obtained at or about the time of its publication? A. Yes, sir.

Q. And do you recall where you obtained it? I am not asking you to state where, but do you recall where you obtained this circular? A. Yes, sir.

Q. Do you recall whether or not it was at an office of the Hamburg-American Line or one of its agencies? A. One of its agencies.

**1724**

Mr. Dorr: I renew my offer in evidence and ask to have it recorded the same number as originally offered, as Exhibit No. 85, the number which it originally bore.

Q. Now, I show you what purports to be a circular of the Hamburg-American Line, dated January 8th, 1910, providing for a reduction of the steerage outward rate by the steamship Graf Waldersee, on its sailing January 15th, 1910, to \$24, and ask whether you obtained that circular from one of the agencies of the Hamburg-American Line? A. I did.

Mr. Dorr: I offer that in evidence.

**1725**

Mr. Spooner: I admitted this circular; it is already marked No. 84.

Mr. Dorr: Referring to Exhibit 84; withdraw the offer.

Q. Do you recall whether after the advertised reduction of the rate on the Graf Waldersee of the Hamburg-American Line to \$24, you made a reduction of the rate on the Uranium from the previously advertised \$25 rate? A. I don't remember; if you will show me some of our circulars.

1726

*Paul G. Fourman*

Q. I show you what purports to be a circular of the Northwest Transport Line, advertising a sailing of the Uranium on January 18th, and purporting to quote a rate of \$22 to Rotterdam? A. Yes, sir.

Mr. Burlingham: How much to Hamburg?

Mr. Dorr: \$24 to Hamburg.

Marked Petitioner's Exhibit 165.

1727

Q. Do you recall whether or not, prior to the issuance of the circular of the Northwest Transport Line, Exhibit 165, the North German Lloyd had issued the circular which I now show you? A. Yes, sir.

Mr. Dorr: I offer that circular in evidence and will ask you to translate it.

Marked Petitioner's Exhibit No. 166.

The Witness: Do you want me to translate this?

Q. Yes? A. The circular is printed in Polish and states, "North German Lloyd from New York to Bremen, twinscrew steamer, Neckar, 520 feet long, 9850 tons register, will sail Saturday, January 18th, 10 o'clock A. M. to Bremen, rate for steerage ticket to Bremen is \$24."

1728

Q. Now, the originally announced sailing date of the Uranium had been the 15th of January, had it not? A. Yes, sir.

Q. And the original rate \$25? A. Yes, sir.

Q. Then, the Hamburg-American Line reduced the rate of the Graf Waldersee from \$25 to \$24 for the sailing January 15th? A. Yes, sir.

Q. Now, did the Uranium sail on the 15th? A. Not as I can see from the published circular; the sailing was postponed until the 18th of January.

Q. Do you recall the cause of that postponement? A. Yes, sir; the late arrival of the steamer.

*Paul G. Fourman*

1729

Q. Now, after the postponement of the sailing of the Uranium had been made to the 18th of January, do you recall whether or not the North German Lloyd then advertised the sailing of the Neckar for the 18th? A. Yes, sir.

Q. Do you recall whether the rate of \$24, so announced for the Neckar for the 18th of January, was less than the previously advertised rate for the Neckar? A. Yes, sir.

Q. What was the ordinary published rate for the North German Lloyd steamers at that time to Bremen? A. I think \$35.

Q. Now, after the advertisement of the Neckar, then the Uranium, of your line, reduced the rate to \$22, for the Uranium? A. Yes, sir.

1730

Q. Do you recall whether the Uranium sailed on the 18th? A. I don't think so; I don't remember.

Q. I show you what purports to be a circular of the Red Star Line, under date of January 18th, 1910, announcing a first class rate to Antwerp of the steamer Lapland, of \$22, sailing January 22nd, 1910, Government Exhibit No. 88, and ask whether that refreshes your recollection as to the postponed date of sailing of the Uranium? A. Yes, sir.

Q. Now, what was the date to which the sailing of the Uranium was postponed? A. To my recollection it was to January 22nd, 1912.

1731

Q. Now, Mr. Fourman, when the sailing date of the Uranium was originally January 15th, the Graf Waldersee lowered its rates for that date, the Uranium sailing was postponed to the 18th and the Neckar lowered its rates for that date, postponed again to the 22nd and the Lapland lowered its rates to \$22? A. Yes, sir.

Q. That \$22 was not the original rate of the Lapland, was it? A. No, sir.

1732

*Paul G. Fourman*

Q. What was the original rate of the Lapland?  
A. I don't know exactly what the rate was.

Q. Can you give it approximately? A. I think it was \$35, but I am not sure.

Q. I show you Defendant's Exhibit 1 for identification and offer the same in evidence and ask you whether that is the circular of the Northwest Transport Line? A. Yes, it is.

Q. I call your attention to the announcement of the sailing of the Napolitan Prince, on Saturday, January 29th, 1910, and ask whether \$25, the rate entering on this circular was the advertised steerage rate for the sailing of that ship? A. Yes, sir.

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Marked Petitioner's Exhibit No. 167.

Q. Now, I show you what purports to be a circular of the Hamburg American Line, advertising the sailing of the President Lincoln on January 29th, 1910, and the steerage rate to Hamburg of \$35, and ask you whether or not you obtained this circular from some agents or agency of the Hamburg-American Line?

Mr. Burlingham: Why don't you ask him where he obtained it for a change.

1734

Mr. Dorr: You made the qualified admission in regard to this.

Mr. Spooner: Yes.

Q. Do you recall whether or not there was a reduction in the rate of the President Lincoln for the sailing, January 29th, from \$35 to \$22? A. I can't remember exactly what steamer was against us at that time.

Q. I call your attention to Exhibit 86 and ask whether that refreshes your recollection? A. It does.

Q. Do you recall whether or not the Napolitan Prince reduced its rate to \$22? A. As I see from our circular.

*Paul G. Fourman*

1735

Q. Is that your circular, the paper which I show you? A. Yes, sir.

Q. And are the facts stated on that as to the reduction in rates correct? A. Yes.

Mr. Dorr: I will offer that in evidence.

Marked Petitioner's Exhibit No. 168.

Q. Now, Mr. Fourman, can you state whether or not the rate advertised in Government's Exhibit 167 to Hamburg, was the rate of your line to that point? A. Yes, sir.

Q. Rate of \$28? A. Yes, sir.

Q. Are you familiar with the inland European rates from the ports of Rotterdam and Hamburg? A. To some extent.

Q. Have you had occasion to examine them? A. Yes, sir.

Q. Inland rail; have you sufficient familiarity with them to state whether or not—

Mr. Spooner (interrupting): Have you got a tariff?

Mr. Dorr: I don't think I have any Hamburg tariff. If I did have one I would use that. I will let the tariff speak for itself.

Q. I show you what purports to be the tariff of the Uranium Steamship Company, European railroad tariff from Rotterdam and ask whether that was a tariff published by you? A. Yes, sir.

Mr. Dorr: I ask that that be marked for identification.

Marked Petitioner's Exhibit No. 169, for identification.

Q. Did you fix the inland rates in accordance with this tariff which has just been identified? A. In connection with steerage passengers.

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*Paul G. Fourman*

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Q. Referring again to Government's Exhibit 164, I ask you whether the sailing of the Sicilian Prince was advertised for Saturday, February 25th, for \$25 for Rotterdam, and \$28 to Hamburg? A. Yes, according to the circular.

Q. That circular was correct in that particular? A. Yes, sir.

Q. I show you Exhibit 90, purporting to be a circular of the Hamburg-American Line, advertising the sale of the President Grant on February 5th, 1908, the steerage rate to Hamburg being \$35, and ask whether or not that is a circular which you obtained of an agent or agency of the Hamburg-American Line? A. Yes, sir.

Mr. Dorr: I renew my offer in evidence, without taking advantage of the qualified admission.

Q. Do you recall whether or not there was a reduction of the rate of the President Grant for that sailing? A. I don't remember.

Q. I show you what purports to be a circular of the Hamburg-American Line, Government Exhibit 89, and ask whether that was received by you from an agent of the Hamburg-American Line? A. Yes, sir.

1740 I think so.

Mr. Dorr: That is already in evidence.

Q. That is a reduction from \$35 to \$32? A. I don't remember whether it was from \$35 to \$32.

Q. Well, as a rule there was a reduction? Well, go ahead and give us your best recollection about the matter? A. I cannot tell whether it was reduced from \$35 to \$32? This was the intermediate reduction down from \$35 to \$32; there might have been something between.

*Paul G. Fourman*

1741

Q. There may have been an intermediate reduction? A. Yes; that is reduced that day.

Q. That is the last reduction? A. I cannot tell whether it was the last reduction.

Mr. Spooner: Reduction from \$35 on that other card, to \$32?

The Witness: It seems so.

Q. As I understand, you are not sure whether or not there was intermediate reductions? A. I am not sure.

Q. Do you recall whether the rate of the Sicilian Prince of your line was reduced to \$23 for the sailing of February 5th? A. I remember issuing this postal card, and offering the reduction.

1742

Q. That was accurate? A. Yes, sir.

Mr. Dorr: I offer this in evidence; this is the Northwest Transport?

The Witness: Yes, sir.

Marked Petitioner's Exhibit No. 170.

Q. I show you what purports to be an advertisement of your line of the sailing of the *Volturno*, for April 2nd, 1910, steerage \$28 to Rotterdam; was that issued by your line? A. It was issued by the Northwest Transport Line.

1743

Q. And does that accurately state the rate? A. Yes, sir.

Mr. Dorr: I offer that in evidence.

Marked Petitioner's Exhibit No. 171.

Q. Do you recall whether after the issuance of the advertisement of that rate, there was issued by the White Star Line a circular which I now show you, advertising the reduction of the rate of the steamship *Laurentic* to \$27 to Hamburg, Bremen, Antwerp and Rotterdam, third class? A. Yes, sir; I remember obtaining this particular card from one of the agents of a conference line.

*Paul G. Fourman*

1744

Mr. Dorr: I offer that in evidence.  
Marked Petitioner's Exhibit No. 172.

Q. Has that been the usual rate of the Laurentic?  
A. No, sir; this was a reduced rate.

Q. What to the best of your recollection was the original rate? A. I don't remember.

Q. Well, approximately, Mr. Fourman? A. Well, either \$33 or \$35.

Q. Now, under this circular of the White Star Line, the same rate was made for Rotterdam, Antwerp, Bremen and Hamburg; had your line been making the same rate for those points, prior to that time?  
A. No; we quoted just a rate to Rotterdam.

Q. After seeing that circular did you make any change in your system of advertising rates? A. I don't remember; perhaps I did.

Q. I show you what purports to be a circular of the Northwest Transport Line, announcing a change in sailing of the Volturmo to April 9th, and a flat rate to Antwerp, Hamburg and Rotterdam of \$28? A. Yes, sir, I remember that.

Q. That is your own circular? A. Yes.

Q. And accurately states the rates? A. Yes, sir.

1746

Mr. Dorr: I offer it in evidence.  
Marked Petitioner's Exhibit 173.

Q. I show you a circular of the White Star Line, advertising a reduction in rate for the steamship Adriatic to sail April 9th, a reduction of rate to \$27 for this steamer and sailing only, rates for all other sailings will remain unchanged. Do you recall whether or not you received that from some agent of a Conference Line? A. Yes, sir.

Q. Do you recall whether there were any further reductions on that trip? A. I do not.



*Paul G. Fourman*

1747

Mr. Dorr: I offer that in evidence.

Marked Petitioner's Exhibit 174.

Q. So that it appears from these circulars, does it not Mr. Fourman, that when the sailing of the *Volturno* was postponed from April 2nd to April 9th, a second steamer was advertised with a reduction in rate on the postponed sailing date of the *Volturno*?

Mr. Spooner: The circulars speak for themselves. I object to the question and to the witness characterizing them.

A. Yes, sir.

1748

Q. Do you recall whether or not steamers of the North German Lloyd, as well as the steamers of the Red Star Line and White Star Line and Hamburg-American Line introduced rates against your steamers? A. I didn't get that.

Q. Do you recall whether or not a steamer of the North German Lloyd at any time sailed at a reduced rate on the same sailing dates as your own steamers?

A. In many cases.

Q. I call your attention as to what purports to be a circular of your line, advertising the sailing of the *Sicilian Prince* for March 19th, 1910, steerage rates to Rotterdam \$28, and ask whether that is issued by your line? A. It is.

1749

Mr. Dorr: I offer that in evidence.

Marked Petitioner's Exhibit No. 175.

Q. I show you what purports to be a circular of the North German Lloyd steamer *Darmstadt*, advertising the sailing of the steamer *Darmstadt* for Bremen on March 19th, at a steerage rate of \$27? A. Yes, sir.

Q. And ask whether that is the circular you obtained from one of the agencies of the North German

1750

*Paul G. Fourman*

Lloyd Line? A. This is not an agency circular. This is a so-called hand bill and I don't remember whether I received it from one of the agents or simply in some other way. It was practically issued to the public.

Q. Did you obtain it from some public source, some source to which the public had access? A. I think so.

Mr. Dorr: I will offer that in evidence.  
Marked Petitioner's Exhibit No. 176.

1751

Q. I show you what purports to be a circular of the Northwest Transport Line advertising a sailing of the steamer Uranium with the rate of \$25 to Rotterdam, \$28 to Hamburg, \$27 to Bremen, \$33 to Libau, sailing December 4, 1909, and ask whether that is a circular of your line? A. Yes.

Mr. Dorr: I offer this in evidence.  
Marked Petitioner's Exhibit No. 177.

1752

Q. I show you what purports to be a circular of the Russian American Line announcing a change in rates only for the steamship Lituania sailing for New York, on December 4, 1909, quoting a steerage Rotterdam rate of \$24, and ask whether that is a circular of the Russian American Line, which you obtained from an agent of that line or from some source where it was being issued to the public? A. It is.

Mr. Dorr: I offer that in evidence.  
Marked Petitioner's Exhibit 178.

Q. I show you what purports to be a circular of the Northwest Transport Line advertising a sailing of the Volturno with a rate of \$25 to Rotterdam, for November 20, 1909, and ask whether that is a circular of your line? A. It is.

*Paul G. Fourman*

1753

Mr. Dorr: I offer that in evidence.  
Marked Petitioner's Exhibit 179.

Q. I show you what purports to be a circular of the Russian American Line advertising the reduction in rates on the steamship Estonia, from New York to Rotterdam for November 20, 1909, to \$24, and ask you whether that is a circular which you obtained from the Russian American Line or its agents, or from some public source? A. Yes, it is.

Mr. Dorr: I offer that in evidence.  
Marked Petitioner's Exhibit 180.

1754

Q. Do these circulars as to which I have been examining you illustrate the course of business of your lines and the Conference Lines as to the fixing of rates for the sailing of steamers during the period which you have testified to; that is, from February, 1906, to the present time? A. Yes, sir.

Q. Mr. Fourman, will you state the course of business of your line as to the sale of prepaid westbound tickets to inland points in the United States? A. We are selling them in the same way as any other line. We are selling westbound prepaid tickets in the same way and manner as any other line does.

Q. Do you issue rail orders to your passengers which are honored by the railroads on the arrival of the passenger at New York? A. Yes, sir.

1755

Q. And do you thereafter pay the railroad the sums covered by those rail orders? A. We don't pay direct to the railway companies.

Q. To the association representing the railroad companies? A. No, we pay to the so-called Emigrants' Clearing House.

Q. That is an organization which represents the railroads, does it not, in the matter? A. I suppose so.

1756

*Paul G. Fourman*

Q. Do you know whether or not that is the same way in which the other steamship companies pay railroads for their rail orders? A. I think so.

Mr. Spooner: I move that the answer be stricken out.

Mr. Dorr: I will consent that that be stricken out unless his knowledge further appears—

Mr. Spooner: Where is that clearing house located? Here?

1757 The Witness: 143 Liberty Street.

Mr. Dorr:

Q. What was the source of any information that you have in the matter, Mr. Fourman? A. In what way?

Mr. Bradley: Do you mean as to the other lines?

Q. As to the other lines, yes? A. Well, I was with C. B. Richard & Co.

1758 Q. Do C. B. Richard & Co. represent a conference line? A. They represent conference and non-conference lines, and I remember the bills for railway tickets would come in the same way as for the conference.

Q. Now, has your line made any attempt to secure so-called commercial allowances from the railroads on eastbound traffic?

Mr. Beers: I renew my objection as to commercial allowances and passenger associations. The evidence sought to be elicited is not within the issues, incompetent and immaterial.

A. On eastbound?

Q. Yes? A. We tried to.

*Paul G. Fourman*

1759

Q. Have you succeeded? A. Not so far.

Q. Have you made an effort to secure so-called commercial allowances on Westbound traffic? A. We are getting commercial allowances on westbound business.

Q. On what part of your westbound? A. As far as Chicago, including Chicago.

Q. Have you succeeded in getting commercial allowances from the Western Passenger Association? A. No, sir.

Q. Which covers the territory west of Chicago? A. No, sir.

Q. Have you tried to? A. We asked several times to be allowed that commercial allowance but we did not get it.

1760

Q. Do you recall whether or not you entered into negotiations with the Central Passenger Association, Mr. Donald, of the Central Passenger Association, with regard to commercial allowances? A. I think I did write a letter or two to Mr. Donald.

Q. Do you recall whether or not you received this letter which I now show you in reply (handing witness letter)? A. Yes, sir.

Mr. Dorr: I will offer that letter in evidence.  
Marked Petitioner's Exhibit 181.

Mr. Beers: Objection renewed.

1761

Q. Do you recall what you did after receiving this letter to endeavor to secure commercial allowances from the Central Passenger Association? A. I called on Mr. Sandford.

Mr. Burlingham: That is not responsive.

Q. Is Mr. Sandford the secretary of the conference? A. At that time he was the secretary of the conference.

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*Paul G. Fourman*

1762

Q. Did you have any conversation with him about commercial allowances? A. Yes, sir.

Q. What was the conversation?

Mr. Spooner: Objected to as immaterial.

A. I asked Mr. Sandford how we could become a party to the agreement upon which we could receive the commercial allowance from the railroad companies.

Q. What happened after that? A. Mr. Sandford said that he would not have anything to do with it.

1763

Q. Is that all that Mr. Sandford said and all that you said? A. Mr. Sandford also referred me to Commissioner Donald.

Q. The same man who had sent you this letter? A. Yes.

Q. What did Mr. Donald do? Refer you back to Mr. Sandford?

Mr. Bradley: I object to that.

Q. What occurred when you went back to Mr. Sandford? A. The same result.

Q. And did you have any further conversation with Mr. Sandford? A. No, sir.

1764

Q. Do you recall whether or not you had any conversation with him over the telephone? A. Yes, I had written a letter to Mr. Sandford and not receiving a reply for about a week or ten days called him up and asked him whether my letter was received and why I did not get any answer. He again said that he had nothing to do with it.

Q. And have you succeeded in securing the commercial allowances in question? A. No, sir.

Q. Do your agents on eastbound traffic arrange for through transportation to inland points in Europe? A. In some cases.

Q. If the passenger desires it, or, what are the cases? A. Well, in connection with Russian east-bound traffic and the Austrian we make it a point with the agents to book the passengers through to their destination.

Q. Have you presented vouchers or transportation vouchers to the railroads with the request for a commercial allowance? A. On what business, Mr. Dorr?

Q. On eastbound business? A. That would be in connection with American railway fares?

Q. Yes? A. Yes, on one occasion we sent in the vouchers and a statement to Mr. Donald of Chicago.

Q. Did you receive the allowances? A. No, sir; we received the statement with the vouchers back again.

Q. Do you know Malinowsky who testified here, Mr. Fourman? A. I know an agent named Malinowsky, from New Britain, Connecticut.

Q. Do you recall whether or not at any time he asked for a refund on a number of tickets of your line prepaid tickets of your line? A. Yes, sir.

Q. Do you recall whether or not those tickets passed through your hands? A. Some of them did.

Q. What did you do with those tickets? A. We ordered the tickets for cancellation.

Q. What do you mean by that? A. We instructed our London office to have the tickets cancelled—stopped.

Q. And do you recall whether or not—where are those tickets now, do you know? A. Do you refer to the cancelled tickets?

Q. The tickets which were returned to you by Mr. Malinowsky for refund? A. I don't know where they are.

Q. Do you know whether they are in this country or in Europe? A. I believe they are in our London offices.

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*Paul G. Fourman*

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Q. I will ask you, Mr. Fourman, if you will endeavor to secure those tickets either from your London office or your New York office, if they are here. Do you recall whether or not those tickets were issued in the usual form in the ordinary course of business by your line? A. They must have been.

Q. Well, were they, from your inspection of them when they were returned to you for refund? A. I will have to see the tickets, Mr. Dorr; I could not say anything before seeing them.

1769

Mr. Beers: I move to strike out the answer.

Q. Did you make a refund on those tickets? A. On some of the tickets cancelled by Mr. Malinowsky, we did.

Q. Do you make refunds on tickets which are not regularly issued and issued by the authority of your line? A. Not necessarily.

Q. Well, do you? A. No.

Q. You say some of the tickets were cancelled. What was done with the others? A. I don't remember, because Mr. Malinowsky or any other agent would have quite a number of tickets. I don't know what part of them were cancelled.

1770

Q. Were the tickets on which refunds were claimed—what is your recollection as to whether they were valid tickets or whether there was anything irregular about them which made them void? A. As far as I can recollect the tickets were cancelled for the reason that the passengers—

Mr. Burlingham: He has not asked what the reason was, have you, Mr. Dorr?

Q. No, I am asking, Mr. Fourman, whether they were to the best of your recollection regularly issued tickets? A. Yes, sir, they were.



*Paul G. Fourman*

1771

Q. Were they the kind of tickets, in the form which are regularly accepted by your line for transportation?

A. Yes, sir.

Q. Was Mr. Malinowsky a duly authorized agent to sell those tickets? A. Yes, sir.

Q. Was there, as far as you know from your own observation of them any defect whatsoever in those tickets? A. Not that I know of.

Q. And it was part of your duty to examine them, was it not, when they were returned for cancellation with the claim for refund? A. Yes.

Q. When a claim for refund, is made on a ticket, Mr. Fourman, what is your course of business as to an examination into the grounds on which a refund is claimed? A. There may be different reasons, Mr. Dorr. At times tickets are cancelled because passengers don't care to travel; at times they are cancelled because the purchaser does not care to have the passenger come, and at times because the passenger is unable to proceed and at times because they could not reach Rotterdam.

1772

Q. Now, which class of those circumstances were the grounds for the refund of these particular tickets? A. I think that was the last reason, that they could not reach Rotterdam.

1773

Mr. Burlingham: The witness doesn't know and his answer is hearsay. I move to strike it out.

Q. Is that the only time when you have had tickets returned to you under the circumstances that these Malinowsky tickets were returned? A. No, that was not the only time.

Q. It is part of your duty, is it not, as passenger agent to investigate into any causes which operate to hinder the use of your tickets? A. Yes.

*Paul G. Fourman*

1774

Q. Did you make an inquiry at this time in the case of the Malinowsky tickets to ascertain why it was that the passengers were unable to reach Rotterdam? A. Yes.

Q. Do you recall whether or not you had any correspondence or conversations with Mr. Malinowsky? A. Yes.

Q. As to why these tickets could not be used by persons to whom they had been issued? A. Yes, sir.

1775 Q. Were there any other occasions when tickets were returned to you and the same reasons given to you by other agents as were given to you by Mr. Malinowsky or other persons as to their inability to use tickets?

Mr. Beers: Objected to as irrelevant and as leading.

Mr. Spooner: I object to it as incompetent, irrelevant and hearsay, and I won't add impertinent out of respect for the counsel for the Government.

A. There were other cases where tickets have been returned to us for cancellation for similar reasons.

1776 Q. Mr. Fourman, as passenger agent of the Uranium Line, what is your experience as to the practicability of the issuance by your line of tickets from Rotterdam to New York to persons intending to reach Rotterdam from points in Russia through Germany?

Mr. Burlingham: I object to it as too vague, what is his experience as regards practicability? He has not been shown to have any knowledge whatever on the subject.

A. My experience is that Russian passengers arriving at a German frontier who had tickets of our

*Paul G. Fourman*

1777

line are not permitted to proceed to Rotterdam by way of Germany.

Mr. Burlingham: I move to strike out the answer as hearsay.

Q. Do you book passengers at your New York office of your line, third class business? A. Very few.

Q. Do you do it at all? A. Occasionally.

Q. What rates do you sell tickets at your office at? A. Eastbound or westbound?

Q. Both. Do you sell at the published rate or some other rate? A. At the published rate.

Q. Do you deduct the commission? A. Not to private individuals, not to direct purchasers.

Q. That is, you allow the commission to agents? A. To agents only.

Q. Have you any arrangements with your agents by which they do their business under bond? A. Most of our agents are under bond.

Q. Have any of your agents ceased to work for you? A. For what periods? When?

Q. During the last four years? A. Well, quite a number did.

Q. A considerable number? A. Yes.

Q. Have any of those agents gone over to the Conference Lines? A. Some did.

Q. Do you know whether or not any inducements have been held out to those agents by the traveling agents of the Conference Lines?

Mr. Beers: Objected to as leading.

A. I don't know.

Mr. Dorr: Your witness.

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*Paul G. Fourman**CROSS-EXAMINATION by Mr. Burlingham:*

Q. Mr. Fourman, will you give us the date of the beginning of your line here in New York? A. Which line?

Q. Your present line, the Uranium; it began as the Continental? A. No, sir.

Q. What did it begin as? A. As the Northwest Transport Line.

Q. When; give the date? A. I don't remember the exact date, but I think it was in February, 1909.

1781

Q. And then it changed its name or did it give up to another company? A. I don't know what happened, why the name was changed.

Q. What was it changed to? A. To the Uranium Steamship Company.

Q. That is a different corporation? A. I think so.

Q. Has the Northwest Transport Line gone out of business completely? A. I have no knowledge of the present situation of the Northwest Transport Line.

Q. Were you an officer of that company? A. No, sir, I was the passenger agent.

Q. What are you, the passenger agent of the Uranium Line? A. Yes, sir.

1782

Q. And are the officers of this company different from the officers of the Northwest Transport Line? A. Yes.

Q. Any of the same officers? A. I don't think so.

Q. Who is the president of the Uranium? A. I don't know.

Q. Is there any officer in this country? A. Of the Uranium Steamship Company?

Q. Yes? A. Nobody, outside of Mr. Thomas.

Q. What is his position? A. He is the New York manager of the line.

Q. What is his full name? A. Edward L. Thomas.

Q. What had he to do with the Northwest Trans-

*Paul G. Fourman*

1783

port? A. He was the manager of the Northwest Transport.

Q. During the whole time of its activity? A. I don't know.

Q. Did you have anything yourself to do with the New York & Continental? A. I was connected at that time with C. B. Richard & Company and was in the passenger department.

Q. Were they the agents? A. They were the passenger agents.

Q. Of the New York and Continental Line? A. Yes.

Q. Did Mr. Thomas have anything to do with it? A. With the New York & Continental, I am not sure: I don't remember.

Q. Do you know when the New York & Continental began to do business here? A. No, sir.

Q. You were with it when it began? A. When the passenger business began.

Q. When did the passenger business begin? A. In 1908; I don't remember the months.

Q. You have been continuously with these three lines since 1908, have you? A. Yes.

Q. And the Uranium owns or controls the same steamers that its two predecessors did? A. I understand that they purchased the steamers.

Q. Formerly they were chartered, I suppose, or something like that? A. Something like that, by the Northwest Transport Line.

Q. And you are doing a regular passenger business as between here and Rotterdam and Libau? A. No, not Libau; between here and Rotterdam and Halifax on the westbound trip.

Q. Have you statistics showing what number of third class passengers you have carried in the lines, in the years 1908, 1909, 1910 and 1911? A. I have not these statistics for 1908 or 1909, as C. B. Richard

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*Paul G. Fourman*

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and Company were the agents at that time. Following them Vesely Company were the passenger agents, but I have the statistics of the Uranium Company.

Q. Are you familiar with these reports of Trans-Atlantic Passenger Movement? A. I saw some of them.

1787

Q. I see, Mr. Fourman, that these reports of Trans-Atlantic Passenger Movement which were marked for identification, Petitioner's Exhibits 154 to 159 inclusive, give the number of passengers by each steamer both eastbound and westbound with dates of departure and dates of arrival and that they contain the statistics of the Uranium Steamship Company. Look, for instance, at this one of 1911, table 56, page LVI, and see whether that is substantially correct? A. You mean the number of passengers carried?

Q. Yes? A. Yes, sir.

Q. Now, will you kindly look at the report for 1910, marked for identification Petitioner's Exhibit 158, table LIX, 59, and see whether that is substantially correct in regard to the Uranium? A. Yes, I think that is right.

1788

Q. Then will you kindly look at this one giving the passenger movement for 1909, Petitioner's Exhibit 157 for identification, table 47, XLVII, showing the Northwest Transport Line passengers carried east and west during that year? A. Assuming that these figures are taken from the manifest.

Q. I don't know where they are taken from, but I don't ask you to verify them to the last figure, but from your familiarity of the number of passengers carried on your steamers from time to time you can say that they are substantially correct? A. Yes, sir.

Q. Is it substantially true that in the year 1909 the Northwest Transport ships made twenty-one trips from New York to Rotterdam and carried 3341 third class passengers? A. According to these reports--

*Paul G. Fourman*

1789

Q. Look at the one in 1910 now. Is it true that the Uranium Steamship Line's ships made twenty-eight trips in the year 1910 from New York to Rotterdam, carrying 10,016 steerage passengers? A. I suppose so.

Q. Now, look at the next one. Is it true that the Uranium Line's ships made twenty-six trips in the year 1911 from New York to Rotterdam carrying 13,286 steerage passengers? A. Yes, sir.

Q. Mr. Fourman, did you carry all these passengers at these cut rates that you have described this morning?

1790

Mr. Dorr: I object to the form of the question "cut rates," because the witness has already testified that certain of the passengers as I understand it were carried at the regular rates.

Mr. Burlingham: I don't wish to characterize them.

The Witness: Some of them were carried at full rates.

Q. That is, you might start at \$28 and then as the competition grew more active you would reduce it to \$22; is that it? A. Exactly.

Q. Your business was constantly increasing I suppose in these years? A. Yes, sir.

1791

Q. I want your statement from your own knowledge on that subject? A. Yes.

Q. Have you added any ships in the last year, 1910? A. No.

Q. Or 1909? A. No, sir.

Q. There are the same ships running now? A. Yes.

Q. You have not been driven out of business yet, have you? A. Not yet.

*Paul G. Fourman*

1792

Q. Are you going on at the old stand, having ships sail every week or two weeks? A. Yes, sir.

Q. Now, at the same time that you were the passenger agent for the Northwest Transport did I understand that you had something to do with the Russian Volunteer Fleet? A. Yes, sir.

Q. In the year 1908? A. In the years 1906, 1907 and 1908.

Q. That line continued in business about two years you say? A. Two years, yes.

Q. Was the Russian Government interested in that line?

1793

Mr. Dorr: I object unless the witness knows.

A. Yes, partly.

Q. Did the Russian East Asiatic Line have vessels here running from here at the same time with the Russian Volunteer? A. Yes, sir.

Q. Were they entirely different companies at that time? A. What do you mean?

Q. The Russian Volunteer Line and the Russian East Asiatic, were they entirely separate companies? A. Entirely separate companies.

Q. They never amalgamated, did they? A. Not that I know of.

1794

Q. The Russian Volunteer Line was known as the Russian Volunteer Fleet, wasn't it? A. Yes, sir.

Q. That did business for two years and then disappeared from America, did it? A. Yes.

Q. Do you know whether it continued in other parts of the world? A. It does continue.

Q. Where? A. Between Odessa and the Far East, and then they have some other lines in the East.

Q. That is where it began doing work, was it not? A. Yes.



Q. I think you said this morning that the Russian Volunteer Fleet at first plied between the Black Sea and the Far East? A. Yes.

Q. And now it has gone back to that service? A. It has not gone back to that service; it has always continued in that service with other steamers.

Q. But the steamers it had here are now engaged in that service? A. No, sir, they are laid up.

Q. I beg your pardon? A. They are laid up. One of them was sold the Austrian Government, the Moscow.

Q. How many boats did they have? I have forgotten? A. On this line, five.

1796

Q. You were examined before a committee of Congress, weren't you? A. Yes, sir.

Q. In January, 1911, wasn't it? A. Yes, sir.

Q. And didn't you say there before that committee that the Russian Volunteer Fleet was owned by the nation? A. It was to an extent owned by the nation. It was inaugurated by popular subscription after the Russo-Turkish War in 1876 and 1877, and I happen to be born in the same section of the country.

Q. What did you mean in testifying before that committee that the Russian Volunteer Fleet was practically a semi-government line belonging to the Russian Government, that the steamers were owned by the nation?

1797

Mr. Dorr: I object to that form of question. The witness should first be asked whether or not he made such a statement.

Mr. Burlingham: He said he testified. Well, I withdraw the question.

Q. Did you testify as follows before the Committee of Congress in answer to Mr. Hawley: "By Mr. Hawley: Q. Do you know the names of the managers of these lines, Mr. Fourman? A. Yes, sir, the Rus-

*Paul G. Fourman*

1798

sian Volunteer Fleet was practically a semi-government line belonging to the Russian Government, the steamers were owned by the nation." Did you testify to that? A. Yes.

Q. Was it true? A. To an extent.

Q. To what extent was it not true? A. Well, I will tell you to what extent it was true.

1799

Q. Very well; either way? A. The officers of the Russian Volunteer fleet were all of the Russian Navy. The Russian Volunteer Fleet was receiving and is receiving now a subsidy on the other lines. The steamers in time of war are to carry soldiers, ammunition and so on, and were built for that purpose. Now, I stated that the nation owned them, as I said before the Russian Volunteer Fleet was inaugurated through a popular subscription all through the Empire of Russia, and each state, or as we call it there, government, subscribed a certain sum of money to the fleet to build a steamer. That is what most of the steamers are named after the states, like Petersburg, Moscow and so on. After that the Russian Volunteer Fleet were building steamers out of the money that they made.

1800

Q. Out of this popular subscription? A. No, out of the profits. The first inauguration of the line was a popular subscription.

Q. That is what you meant by the nation; you meant the Russian people as a whole? A. I meant the people as a whole, yes.

Q. But the government had some interest I suppose? A. The government had the management of the Russian Volunteer Fleet in that it managed the affairs of the Russian Volunteer Fleet, took charge of each department, Department of War, Department of Marine and Department of Navy, and so on.

Q. Who fixed the rates? A. For the Russian Volunteer Fleet?

*Paul G. Fourman*

1801

Q. Passenger? A. For the Russian or American Service.

Mr. Dorr: I object unless it is made more specific.

Q. Who fixed the westbound rates for third class passengers? A. I don't know who fixed the rates; I could not tell you.

Q. Who fixed the rates for the eastbound? A. I could not tell you.

Q. Did this competition on the part of Conference Lines exist at the time of the Russian Volunteer Fleet? A. Yes, sir.

1802

Q. Who reduced the rates of the Russian Volunteer steamers? A. I don't know who reduced them.

Q. Did you? A. No, sir.

Q. Did Vesely Company have anything to do with it? A. Absolutely nothing.

Q. You were then their chief clerk and you had no responsibility for rates, I suppose? A. No.

Q. You had personally never anything to do with the Russian East Asiatic? A. Yes.

Q. What? A. When the Russian East Asiatic Steamship Company went out of the conference and became an independent line, one of their steamers was on the way to New York. Mr. Richards received a cable as to whether he would not want to take care of the line as a general passenger agent. He was at that time communicating with the committee of the Russian Volunteer Fleet. The steamer came in in the meantime and I had charge of the passengers. If I am not mistaken it was the Estonia or the Sultania; I don't remember.

1803

Q. That is your only relation? A. That is all. Oh, yes, there was another relation. C. B. Richard would not accept the agency as the Russian Volunteer Fleet, did not want them to represent two Rus-

*Paul G. Fourman*

1804

sian Lines at the same time and they turned over the agency to Benham and Boyesen.

Q. Were those two lines the Russian Volunteer and the Russian East Asiatic, rivals in business? A. Not when they were independent; not when the Russian East Asiatic was independent.

Q. Did they have an arrangement, do you mean?

A. No, they did not have an arrangement.

Q. Why weren't they rivals if they were carrying passengers to and from Russia and New York? A. They were quoting the same rates I believe.

1805

Q. You mean to say if you quote the same rates you are not competitors? A. Well, I don't know to what extent you mean, they are competitors in what way?

Q. I understood you just a moment ago to say that the Russian Volunteer Fleet did not wish Messrs. C. B. Richard & Company to take the agency of the Russian East Asiatic because they were rivals in business. Am I wrong? A. Yes; you are right; in that way they were competitors, they were rivals.

Q. And the Russian East Asiatic began in 1908, did it? A. No, I think it began earlier.

Q. And it continued until when? A. The Russian East Asiatic still continues.

1806

Q. And it has been, you say, in the conference and out of the conference? A. Yes.

Q. Do you know the dates? A. No, sir.

Q. Now, Mr. Fourman, I have looked through this large number of exhibits put in by the Government, circulars announcing the sailings of vessels of the Northwest Transport and the Uranium Line and in the case of all of these that I have seen the commission on third class passage tickets is stated at \$3, yet you say that the commission was \$4, do you? A. Some times.

Q. Why was not that stated in these circulars to agents which were gotten out by your company? A. It did not concern all the agents.

Q. Well, did you have other circulars than these that you have not produced? A. No, but that was a special agreement.

Q. Take for instance Petitioner's Exhibit 158, with regard to the Napolitan Prince, rate to Rotterdam, \$22, commission \$3, and this 167, notice of four steamers, the Uranium, Napolitan Prince, Sicilian Prince and Volturno, the fares are given, steerage rates to Hamburg, \$28, Bremen \$27, Antwerp, \$26, Libau, \$33, commission \$3, wasn't that a general circular to all agents? A. Yes, sir, but not to general agents.

Q. Were these circulars the sole circulars that were given out to the agents here in New York City? A. Yes.

1808

Q. To the agents of the East Side, Essex Street and the streets of the East Side? A. I don't remember whether it was Essex Street.

Q. How many agents have you in New York? A. City?

Q. Yes? A. About twenty.

Q. How many are on the lower East Side? A. About ten or twelve.

Q. And these agents are in other business too, are they, mostly? A. No, not always.

Q. Do they depend for their entire subsistence in selling tickets for the Uranium? A. Yes.

1809

Q. They are in no other business? A. Maybe some of them are, but not that I know of.

Q. Did you ever know a firm of Oliner Brothers? A. Yes.

Q. Where is their place? A. 67 Clinton Street.

Q. Were they agents of the Northwest Transport Line? A. Yes.

Q. And the Uranium Line? A. Yes, sir.

Q. Are they still? A. No, sir; they are conference agents now.

*Paul G. Fourman*

1810

Q. They are what? A. Conference agents.

Q. When did they cease to be agents for you? A. When the conference gave them the line.

Q. What date? A. I don't remember.

Q. About? A. About a year ago or a year and a half.

Q. Is that their sole business, that of agents? A. Agents and bankers.

Q. For railroads and steamships they are agents?

A. There are no such things as agents for railroads, because the railroads don't allow them now any commissions.

1811

Q. Now. But how was it in 1908, 1909 and 1910?

A. They were selling perhaps tickets for railroad companies.

Q. You said a moment ago that they were solely agents for the Uranium Steamship Company? A. I consider it is the same business, banking business, railway business and steamship. The ticket business is necessarily in the same hands, some of the agents represent various lines and have banking business; others have not.

1812

Q. Then you don't wish to stand by your answer a few moments ago that these agents were dependent solely on the Uranium Steamship Company for their livelihood, do you? A. We have agents who depend upon the Uranium Steamship Company only.

Q. Did they have a salary or commissions? A. Commission.

Q. You have no salaried men, I believe? A. No, none at all.

Q. Are you familiar with the work of the agents on the East Side? A. More or less.

Q. You have had to do with them yourself. Do you go over there? A. Oh, yes.

Q. Are you prepared to swear that the commissions were never more than \$4? A. On steering business?

*Paul G. Fourman*

1813

Q. Yes? A. I don't remember.

Q. I think you ought to remember that. Are they ever \$5? A. I don't remember; maybe for a sailing or two.

Q. You mean when the competition got hot. Did the commission ever rise then to \$6 or \$7? A. Never.

Q. Then you do remember that? A. I do not remember exactly, but it might have been.

Q. Might have been what? A. That the commission was some times more than \$3 or \$4.

Q. I did not ask you that; I asked you whether it had ever been \$6 or \$7? A. I don't think so.

Q. Are you in doubt about it? A. I would not swear to it.

Q. Are you the man in the company that knows most about this matter? A. Now I am.

Q. But \$4 was very common? A. \$4 was very common with some of the agents.

Q. Was it so with Oliner Brothers? A. Yes, it was.

Q. Why was it \$4 with them although it was published at \$3? A. Because Oliner Brothers are agents, they were clerks in an office of some conference agents on the East Side, and one nice day they decided to establish an office of their own and they applied to us for the agency. We appointed them as agents and representing our line only we paid them a \$4 commission.

Q. Now, I understand you to say with regard to the Neckar notice of the sailing of which is in Polish, Petitioner's Exhibit 166, you were good enough to translate, that this was a reduced rate by the North German Lloyd; is that right? A. I suppose so.

Q. And I understood that immediately after that you reduced the rate on some steamer; is that right? A. Yes.

Q. What steamer was that? A. I don't remember now. If I had the cards before me I would know.

1814

1815

*Paul G. Fourman*

1816

Q. Is my recollection correct that you originally had a vessel advertised to sail on January 15th, 1910?

A. Yes, sir.

Q. And that then the Neckar reduced its rate and you postponed your sailing to the 18th for some reason or other? A. There was a deduction for the 15th of January.

Q. Why did you postpone your sailing; I did not understand? A. The steamer was late in coming.

Q. So the Uranium then was advertised to sail on the 18th? A. On the 18th.

1817 Q. Her original rate was what; \$28? A. For the 18th, \$22.

Q. Was that your only advertised rate? A. No, it was not.

Q. What was your previous advertisement? A. \$25 for the 15th.

Q. It was originally to Hamburg, \$28? A. Yes.

Q. Rotterdam \$25? A. Yes.

Q. And you reduced it to \$22? A. Yes.

Q. Was that as appears on Exhibit 165 on January, 1910? A. Yes.

Q. Look at it please, carefully? A. I see it.

1818 Q. Did I understand you to say that was in consequence of some action taken by the North German Lloyd? A. Yes, sir.

Q. What was it? A. That was in the consequence of another sailing which was scheduled for the 15th, if I am not mistaken it was for the Graf Waldersee.

Q. That circular is dated January 8th, the one you referred to now, Petitioner's Exhibit 84? A. Yes.

Q. \$24 on the Graf Waldersee, dated January 8th? A. Yes.

Q. You said it was in consequence of that you fixed your rate at \$22; is that right? A. Yes.

Q. What had the Neckar advertisement to do with it; anything? A. With what?



*Paul G. Fourman*

1819

Q. With the reduction by you? A. The Uranium was originally to sail on the 15th. Her rate was \$28 to Hamburg. The Graf Waldersee on the Hamburg American Line reduced its rate to \$24, they were booking passengers for the 15th at the rate of \$24. Our steamer was postponed to the 18th. We could not expect our agents to book passengers for our line sailing on the 18th at the rate of \$28, when the Waldersee was to sail on the 15th for \$24; changing the sailing we had to reduce our rate to \$22 to Hamburg in order to get the business; the North German Lloyd finding out that the Uranium instead of the 15th would sail on the 18th, reduced their rate to \$24, whereas, according to this rate our rate to Hamburg or Bremen would have been also \$24 or \$25.

1820

Mr. Spooner: Which, \$24 or \$25?

Q. When did the North German Lloyd do that? Isn't that circular dated? A. Yes, it is dated December 11, 1909.

Mr. Dorr: I don't think that purports to be the date of the circular.

The Witness: No, this is the date of the form.

Q. What is the date? A. I don't know. There is not any date at all.

1821

Q. You don't know what date it is? A. No.

Q. Then you say that is not the date; that is merely a form? A. Just the form.

Q. You don't know what date it was issued? A. No, sir.

Hearing adjourned to Thursday, June 27th, 1912, at 10:30 A. M.

1822

*Paul G. Fourman*

## UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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 THE UNITED STATES OF AMERICA,  
 Petitioner,

against

 HAMBURG-AMERIKANISCHE PACK-  
 ETFAHRT - ACTIEN - GESELL-  
 SCHAFT, and Others,
Defendants.  


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 Before Charles  
 E. Pickett,  
 Esq., Ex-  
 aminer.

1823

New York, June 27th, 1912.

Hearing resumed pursuant to adjournment.

## Appearances:

Henry A. Wise, Esq., Goldthwaite H. Dorr, Esq.,  
 Henry A. Guiler, Esq., John S. Bradley, Esq., for the  
 Petitioner.

Messrs. Burlingham, Montgomery & Beecher, by  
 Charles C. Burlingham, Esq., and Norman B. Beecher,  
 Esq., for the Anchor Line, Ltd., *et al.*

1824

Messrs. Choate & Larocque, by Nelson Shipman,  
 Esq., for Norddeutscher Lloyd, *et al.*

Messrs. Spooner & Cotton, by L. C. Spooner, Esq.,  
 for the Allan Line, *et al.*

Messrs. Lord, Day & Lord, by Lucius H. Beers,  
 Esq., and Allan B. A. Bradley, Esq., for the Cunard  
 Line, *et al.*

Ralph J. M. Bullowa, Esq., and Walter Rogers  
 Deuel, Esq., for Russian East Asiatic Co., *et al.*

Paul G. Fourman

1825

PAUL G. FOURMAN, recalled:

*Cross-examination continued by Mr. Burlingham:*

Q. Have you reconsidered your translation of the Neckar circular? A. Yes, sir.

Q. Was that December 18th or January 18th? A. December 18th.

Q. Then of course the announcement of the North German Lloyd that the Neckar was going to sail, had nothing whatever to do with your change of rates on the Uranium? A. Not for that particular sailing.

Q. How many steamers has the Uranium Line now? A. Three steamers.

1826

Q. What are their names? A. The Campanello, the Uranium, Volturno.

Q. Did not the Uranium or the Northwest Transport originally have more steamers? A. They were chartering some steamers before.

Q. Tell us the tonnage of the various steamers, take the Uranium? A. I do not know the tonnage.

Q. About?

Mr. Dorr: My next witness will be able to give this evidence exactly.

Mr. Burlingham: Then I won't trouble with him.

1827

Q. The Avoca was built for you, was she? A. I don't know whether she was built for us, but she was in the service of the New York Continental Line.

Q. Do you know whether her name was changed? A. Did she have another name originally?

Q. Before? A. Before she was named Avoca?

Q. Yes? A. I couldn't tell you.

Q. You don't know much about these steamers? A. No.

Q. Now, several times I notice you said the Hamburg-American Line put on a steamer, or the North

1828

*Paul G. Fourman*

German Lloyd put on a steamer. You don't mean to suggest the sailing dates of those steamers were changed, do you? A. No, sir.

Q. Never? A. No, sir.

Mr. Burlingham: I think that is all I want to ask.

*CROSS-EXAMINATION by Mr. Spooner:*

Q. You gave some testimony, Mr. Fourman, about the sale of tickets by your agents at New Britain of the Uranium Line? A. Yes, sir.

Q. Prepaid tickets? A. Prepaid, yes, sir.

Q. And you stated the passengers were not permitted for a long while, who came from Russia, to travel through Germany to the initial port, you so stated? A. Yes.

Q. How long was that true, to your knowledge; how long have you been in this business? A. Six years.

Q. Only six years? A. Yes.

Q. Do you know how long that has been true? A. Sir?

Q. Do you know how general it was that passengers who came from Russia, were not permitted to go through Germany to Rotterdam? A. That is in cases they have tickets of lines who have not the concession of the German Government to have the passengers to go through Germany.

Q. That is one of the things I want to get at? A. I don't know.

Q. Why was it you do know, and you have just stated that Uranium tickets for passengers, passengers carrying Uranium tickets were not permitted to go through Germany to Rotterdam or the port of sailing? A. They were never permitted.

1830

Q. Who prevented them? A. I understand the control stations.

Q. You mean the German Government prevent it?  
A. I don't know whether it was the Government.

Q. Did the Uranium have any license to do business in Germany, license from the German Government? A. In Germany?

Q. Yes? A. We are not doing any business in Germany.

Q. These tickets were sold on your line, weren't they? A. Yes, sir.

Q. And your passengers were going on your tickets from Germany, to take the steamer at Rotterdam, were they not? A. That is not saying we were doing business in Germany.

Q. Was that permitted in 1892? A. By whom?

Q. By the German Government? A. I don't know.

Mr. Dorr: I object to that on the ground that the Uranium Line was not in existence at that time. The witness's testimony and knowledge is confined to that line.

Mr. Spooner: I am confining him to that line.

Mr. Dorr: Since 1892 I understood you to ask.

1832

1833

Q. Isn't it a fact that since 1892, if you know, that passengers coming from Russian points for America, have not been permitted to pass through Germany, unless they were examined with reference to their health and so forth at the frontier?

Mr. Dorr: I object to that on the ground that the witness's knowledge of the steamship business, as already testified to, goes back to 1906, and the first and only line which he has represented, New York Continental, the North-

1834

*Paul G. Fourman*

west Transport, Russian Volunteer and the Uranium, those steamship lines all came into existence since that time.

Mr. Spooner: There has been so much cross-examination of the witness that it is difficult to understand whether it is direct-examination or cross-examination. I am cross-examining him.

1835

Q. Isn't it a fact that since 1908 passengers coming from Russia have not been permitted to pass through Germany, without certification in respect to health and all that at the frontier? A. I don't know the exact reason why they were not permitted to travel by way of Germany, when they have tickets of the Uranium Line, for instance, but I do know the moment they buy tickets of some other line they are permitted to proceed.

Q. Isn't the reason for that they are examined and have certificates as to their fitness to be admitted in this country? A. Our passengers never object to being examined and inspected by these control stations.

Q. These control stations are maintained by contribution of different companies who utilize them? A. I understand so.

1836

Q. Did your company ever contribute to the expense of it? A. I don't know; we were never asked; perhaps we were.

Q. Did you ever apply to them to contribute? A. I don't know.

Q. But at all events your passengers were not examined with reference to health and fitness to come through Germany, were they? A. They did not have the time to be examined; no sooner they showed their tickets, they were turned back to Russia.

Q. You mean they would not examine at the control stations passengers carried by lines which did not con-

tribute to the expense of maintaining those stations, is that what you mean? A. I don't know any reason why they wouldn't examine them.

Q. Are they Government stations? A. I don't know whether they are Government stations.

Q. Have you ever seen them? A. These stations?

Q. Yes? A. No, sir.

Q. Don't you know it to be a fact that without an examination at those stations, the German Government will not permit them to go through Germany? A. I don't know.

Q. Do you want to leave it in the record as your statement, that they were prevented from passing through Germany, because they held tickets over your lines? A. Because they held tickets of an independent line, or rather a foreign line. 1838

Q. You testified that that was the reason why they were not permitted to go through Germany, because they held tickets over a Russian line, a line owned by Russia or over your line? A. Well, if I am to state the cases I wish to call the attention that whenever such a ticket has been returned to us it was usually stamped with a rubber stamp in German saying, "For immigrants, not valid."

Q. Not what? A. "Not valid, not good."

Q. Not valid for immigrants? A. Yes, and such tickets would have been returned to purchasers, with the request to purchase tickets over some other line, in many cases not mentioning the name of some other line, which means they could buy tickets on any other line but the one they had. 1839

Q. Didn't the validity of that ticket depend upon the question of whether the holder of that ticket has been examined with reference to health and fitness to pass through Germany? A. Well, they couldn't have examined them for that matter as I said before. They

1840

*Paul G. Fourman*

could see whether he was fit to travel and if not, they could send him back.

Q. Who had control of these stations, the steamship lines? A. It seems so from the letters addressed to the purchasers.

Q. Who signed the endorsement from the back with the stamp? A. Agents of Conference Lines in most cases, the North German Lloyd, the Hamburg-Amerika Line, the Holland-American Line, letter-heads bearing the names of the two lines were usually sent to purchasers.

1841

Q. You have never seen any one of these stations? A. No, I stated before I have never seen them.

Q. Do you happen to know what the establishment consisted of, what the system of examination was? A. Do you mean the medical examination?

Q. Yes? A. I don't know exactly, but I suppose a general medical examination would take place.

Q. Well, they had a plant there, didn't they, for fumigation and all that? A. I couldn't tell you; I suppose so, they would not be able to examine them in a barn.

1842

Q. Your agent at New Britain testified as to a large number of tickets that were purchased by people in that vicinity who had come from Russia and who bought tickets to send over for the wife or the children, brother and sister and all that. When a ticket which had been sold by your line was rejected over there, did your company refund the money? A. Sir?

Q. Did your company refund the money? A. Yes, sir.

Q. In all cases? A. Yes, sir.

Q. You said yesterday in some cases? A. In all cases.

Q. In all cases? A. Yes, sir.

Q. The testimony showed that in one case at least, your agent charged several dollars, deducted several



dollars from the refund? A. That might have been his commission.

Q. They get a commission for getting back the money that had been paid for a ticket that could not be used? A. Yes; but we would return to the agent the commission he originally deducted. It is up to him to refund it to the purchaser if he is willing to. We refund the entire amount received from the agent for the ticket. We did not retain one cent.

Q. One witness testified that the agent retained several dollars? A. Well, that is the agent's business.

1844

Mr. Dorr: I object to that statement. The witness's testimony as I recall the testimony was that the agent gave a ticket on another line and so required additional money because of the higher rate of the Conference Line.

Mr. Spooner: The witness testified that the difference—he bought the ticket on another line but that he got several dollars less for the Uranium ticket in refund than he paid, and that he also paid enough more for the other ticket to make the difference, \$13.

Mr. Dorr: My recollection is just the opposite about that. Of course, I may be in error about it.

1845

Mr. Spooner: I am not mistaken about his testimony.

Q. If you sold me a ticket and it was not used and I could not use it, and I returned it to you, would you give me back what I paid for it? A. If you would buy the ticket directly from us, that is, in our office, we would give you back the entire amount; but as the case here was with an agent, the agent deducted his commission when he remitted the money to us.

1846

*Paul G. Fourman*

Q. You would make me pay, then, the commission of your agent? A. No, we do not.

Q. Then why wouldn't you give me back my money?

A. In most of the cases, the agent deals with the purchaser and assuming that we refunded the entire amount of what the agent paid to us, in many cases the agent remits to the purchaser his commission that he made on the ticket.

Q. Didn't you pay the agent his commission? A. Certainly.

1847 Q. Did he take it a second time, then, on the passenger? A. No, he couldn't take it a second time, because he remits to us, less the commission.

Q. What has a passenger to do with your relation to the agent? Suppose I go to your ticket office and buy a ticket; what have I to do with your relations with your agent? A. Then you haven't if you come direct to us. If you were buying a ticket direct from us, you would have absolutely nothing to do with the agent, but if you were in New Britain, Connecticut, and you purchase a ticket in New Britain, Connecticut, from our agent there, naturally, you deal with the agent. If you come to New York, we would refund the money to you in full and get the commission back from the agent.

1848 Q. Then the passenger pays your agent for the service in selling the ticket, is that it? A. It is in most of the cases.

Q. The agent is your agent, isn't he? A. Well—

Q. They are your tickets, aren't they, not his? A. No.

Q. He sells the tickets for you, doesn't he? A. Yes.

Q. As your agent? A. Yes, sir.

Q. Isn't his commission included in the price of the ticket? A. He is remitting to us the price of the

*Paul G. Fourman*

1849

tickets, less the commission, just as with any other line; absolutely no difference.

Mr. Spooner: I will buy my tickets at the main office after this.

The Witness: I wish all of the passengers would buy tickets at the main office, then we would do away with the agent.

*CROSS-EXAMINATION by Mr. Beers:*

Q. Mr. Fourman, you testified as I understand that you have been engaged in this business for six years? 1850  
A. Yes, sir.

Q. Has this system of control stations in the German Government been in existence during that entire period? A. I think so.

Q. And as a steamship man and as a matter of fact, to your general information, that system of control stations has been in existence for a much longer period than six years? A. I think so just from my experience.

Q. It is your information that that system has existed since approximately the year 1892? A. I don't know whether it has existed since 1892, but I know that it did exist prior to 1906. 1851

Q. Prior to 1906? A. Yes, sir.

Q. Prior to 1900? A. I would not tell you; I don't know.

Q. It has existed continuously, has it not? A. I think so.

Q. Isn't it a fact whether or not tickets for immigrants are recognized by the German Government at the control stations depends on whether or not the line issuing them has received a concession from the German Government? A. I suppose so.

1852

*Paul G. Fourman*

Q. So it is a matter of Government regulation with the German Government, is it not? A. I suppose so.

Q. Has your line any concession with the German Government? A. Not that I know of.

*CROSS-EXAMINATION by Mr. Bullock:*

Q. Mr. Fourman, the money that the Uranium Line received from the sale of tickets, is that deposited immediately to the credit of the line? A. Immediately.

1853

Q. Wasn't it, in some occasions, deposited in the State Bank? A. What difference does that make to you?

Q. Was it deposited in the State Bank? A. No, sir.

Q. In no instance? A. No, sir.

Q. Was it deposited with C. B. Richard & Company? A. No, sir.

Q. In no instance? A. No, sir.

Q. Why did you ask me what difference that made to me? A. I don't think this is anything to do with the case.

Q. What connection has the State Bank with the Uranium Steamship Company? A. None at all.

1854

Q. Or C. B. Richard? A. None at all.

Q. Was it so in the case of the Northwest Transport? A. Yes; C. B. Richard & Company were the agents.

Q. Was the money received from prepaid tickets deposited in the State Bank?

Mr. Dorr: I object as immaterial.

Q. As a separate account? A. No, sir.

Mr. Dorr: Objected to as immaterial.

Q. Was it deposited in the State Bank? A. No, sir.

Q. Was it deposited with C. B. Richard & Company? A. No, sir.

Q. Was it immediately deposited in the general account of the Northwest Transport Company? A. If you wish to know the details, I will tell you that Vesley & Company were simply depositors of the State Bank.

Q. Vesley & Company— A. Were depositors just as you and I can be depositors in the State Bank.

Q. Now, when was the money that you received from prepaid tickets taken out of the account of Vesley & Company in the State Bank and turned over to the general account of the Northwest Transport Company? A. At a time when Vesley & Company were agents for the line, it was turned over to the account of the London office upon the arrival of the vessel.

1856

Q. Upon the arrival of the passenger? A. Yes, sir.

Q. It was not turned over upon the receipt of the money, however? A. We kept the account of the Northwest Transport Line in New York.

Q. You kept the prepaid tickets separate? A. No, sir.

Q. The amount received from prepaid tickets separate from the general account? A. We dealt with the New York office of the Northwest Transport Line, with Mr. Thomas.

1857

Q. Was there a New York office at that time on the Northwest Transport? A. Yes, sir.

Q. When they handled the funds of the Northwest Transport? A. Yes, sir.

Q. And when you received money for the tickets on the Northwest Transport Line, unless it was a prepaid ticket, you deposited it immediately with the

*Paul G. Fourman*

1858

Northwest Transport Line? A. We have an account with the New York office of the Northwest Transport Line and were turning over to them the money received by us for transportation.

Q. But you kept a separate account of that money received for tickets from which passengers made immediately their sailings and those in which they were prepaid tickets, so-called? A. We kept a separate prepaid account.

1859 Q. You kept a separate prepaid account and the money received from the prepaid account was not deposited in the general account of the Northwest Transport Line, until the passenger had arrived, is that right? A. I stated it so before.

Q. That is a fact; now, why was that? A. That was a matter of regulation.

Q. Do you do the same thing now? A. No, sir.

Q. Why was that a matter of regulation at that time? A. That was, I suppose, the arrangement between the Lines and Vesley & Company.

Q. Isn't it a fact, Mr. Fourman, that C. B. Richard & Company were afraid that the steamers of the Northwest Transport Lines might not make their sailings? A. No, sir.

Q. You never said that? A. No, sir.

1860 Q. You never heard Mr. Richard say that? A. No, sir.

Q. You are sure of that? A. He might have said it to somebody; he never said it to me.

Q. You never said it? A. No, sir.

Q. You are sure of that? A. Will you repeat that question again?

Q. What did you think I meant?

Mr. Dorr: I object to it as immaterial what he thought you meant.

Q. (Question read.) Can you answer now? A. You mean to say that C. B. Richard & Company were afraid to pay over to the Northwest Transport Line, because the steamers might not sail?

Q. Yes? A. Maybe C. B. Richard & Company were afraid when they were agents, I don't know.

Q. You were with C. B. Richard? A. Yes, sir; but I was not afraid, because I didn't invest anything.

Q. Did C. B. Richard invest in the Northwest Transport Line? A. They must have reasons to be afraid, you know; I don't know what reasons they had. 1862

Q. Now, at the time the Russian East Asiatic Steamship Company, Limited, first commenced the sailings; its steamers were not of the same efficiency as the steamers of the Russian Volunteer Fleet, isn't that true? A. No, they were not.

Q. They were inferior steamers to the Russian Volunteer Fleet? A. Very much so.

Q. So that of course it was fair competition in the first instance for the East Asiatic Steamship Company to charge a less rate than the Volunteer Fleet, with its superior steamers? A. This I couldn't tell you. 1863

Q. Your agent in Chicago is one Anton Burnett, is he not? A. One of the sub-agents.

Q. Do you know anything about his previous conditions? A. No, sir.

Q. Do you know if he was ever in jail? A. I don't know.

Mr. Dorr: I object as immaterial.

Q. Is he known as a notorious scalper? A. Maybe, to you.

Q. No; to the railroads? A. Not that I know about it.

*Paul G. Fourman*

1864

Q. In 1910, you were with the Northwest Transport Line? A. Yes, sir.

Q. Was the Northwest Transport Line constructing any steamers at that time? A. I don't know.

Q. Isn't it a fact that you knew they were not constructing any steamers? A. I don't know.

Q. Were you with Vesley & Company, the general passenger agents? A. Yes, sir.

Q. You had charge of getting out their circulars? A. Not all the time, not while Mr. Vesley was alive.

Q. Was he alive in January? A. What year?

1865

Q. 1910? A. No, sir.

Q. He was not? A. Yes, he was.

Q. You saw all of the circulars that went out, did you not? A. Yes, sir.

Q. Now look at this circular, Defendant's Exhibit 1 and tell me what new steamers were being constructed, Government Exhibit 167? A. I don't know anything about it.

Q. That circular went out with your authority, didn't it? A. Maybe.

Q. There were other similar circulars sent out, from time to time, were there not? A. There were.

1866

Q. And each one of them had the statement that the Northwest Transport Line had new steamers under construction? A. I suppose we have some sort of a letter from London.

Q. Did you have some sort of a letter? A. We must have; I did not invent this.

Q. Have the steamers ever been built? A. No, sir.

Q. Do you know whether the steamship Uranium has a double bottom or not? A. I don't know, sir.

Mr. Dorr: We will concede that it is a single bottom or a triple bottom, whatever you prefer, or double bottom.

Mr. Bullwa: That makes a difference.



By Mr. Burlingham:

Q. Do you remember the time that the Russian Volunteer Fleet went out of business here? A. Yes, sir.

Q. Did you see the cablegram that came from Europe about it? A. I don't remember, sir.

Q. Wasn't there a cablegram sent from Russia to the office in New York? A. I think so.

Q. You don't recall? A. No.

Q. Have you any access to the papers of the Russian Volunteer Fleet here? A. No, sir.

Mr. Burlingham: That is all.

1868

By Mr. Bullowa:

Q. Isn't it a fact that all the passengers you carry eastbound for points west of Chicago who land at Halifax are shipped west through the Canadian Railroad? A. Yes, we do; through the Canadian Pacific.

Q. You get commissions on that? A. Yes, sir.

Q. From the railroads? A. Yes.

Q. So you are not sustaining any loss in the railroad business west of Chicago? A. Provided they go from Halifax.

Q. But you all go through Halifax, you all send them through Halifax? A. Yes, we do.

1869

Q. East of Chicago you get your commercial allowance, do you not? A. We do.

Q. And west of Chicago, you get your allowance from the Canadian railroads? A. If we send passengers by way of Halifax.

Q. You send them all through Halifax? A. Not all: some go by way of New York.

Q. Practically all? A. I cannot say that.

Q. How many go by way of New York? A. I don't know.

Q. About? A. I cannot tell you.

1870

*Paul G. Fourman*

Q. Everything west of the State of Ohio? A. I don't know. I must look up the records.

Q. Have you records showing that? A. We have passenger lists.

Q. Your records showing where the passengers disembarked? A. Yes.

Q. And your Trunk Line bills? A. Yes.

Q. You have them all in your office? They are not in Europe? A. Some of them are in our office.

By Mr. Dorr:

1871

Q. Now, Mr. Fourman, you naturally prefer to have your passengers in the western territory go through Halifax where you can get a commercial allowance, than New York? A. We like to have them go by way of Halifax for two or three reasons; the first reason is they save two or three days' ocean travel, secondly, the rates are cheaper, and the third reason is, we do get the allowance.

Q. You would rather have them go in the way in which they will be able to get an allowance? A. Yes.

Q. Certain passengers, I suppose, prefer to travel by way of New York? A. Some insist they want to go by way of New York.

1872

Q. And in that case, you cannot get your commercial allowance? A. No, sir.

Q. And on the eastbound traffic all the passengers pass through New York, do they not? A. All our steamers sail from New York.

Q. And they do not touch at Halifax? A. No, sir.

Q. You cannot get any commercial allowance on the eastbound business? A. No, sir.

Q. In the western or eastern territory, or in any territory? A. None at all.

Q. Did you know that the Conference Lines had endeavored to induce the Canadian Pacific to refuse

to give you a commercial allowance on your Canadian business; your Halifax business?

Mr. Spooner: Objected to as leading.

Mr. Dorr: I think you have gone into the question of commercial allowances and endeavored to show that there was no injury in them either inflicted or intended. I am referring now to what occurred in the joint meeting the Western Passenger Agents Association and the Conference Lines in November, 1909, in which it appears from the minutes that an effort was made by the steamship lines to induce the Canadian Pacific to refuse to allow the Northwest Transport Line commercial allowances on its Halifax business.

1874

Q. Do you know about that? A. No, sir; I don't.

Q. In regard to the circular in which you made an error in the translation and from which in refreshing your knowledge of Polish, you now find to have been advertised to sail December 18th, do you recall whether or not you had a steamer on the 18th of December, 1910? A. I don't remember.

Q. I ask you to examine Exhibit No. 157 for identification in which it is stated that the Northwest Transport Line had a steamer, the Napolitan Prince sailing on December 18, 1909, and ask whether that is correct? A. Yes, that is correct.

1875

Q. So that the steamer Neckar which was advertising a reduced rate of \$24 was sailing on the same day or advertised to sail the same day as your steamer, the Napolitan? A. Yes, sir.

Q. What was your regular rate for the Napolitan Prince? A. I don't remember now. It was in 1909.

Q. What was your regular rate at that time? A. It must have been as usual, about \$28.

1876

*Paul G. Fourman*

Q. Now, turning to Government Exhibit 158 for identification, to the advertised sailings of the Russian American Line, I call your attention to what purports to be a record of the departure of the Estonia from the Russian American Line on January 18, 1910?

A. Yes, sir.

Q. Was it then, the Estonia of the Russian American Line and not the Neckar which was the ship which was advertised as against the postponed sailing of the Uranium for January 18? A. I don't remember.

1877 Q. Have you a circular of the Estonia? A. I don't know whether I have.

Q. Now, is Germany one country in which there were control stations? A. I understand there are some control stations now, in Hungary.

Q. Did you not have the same difficulty with the Hungarian control stations that you had with the German control stations?

Mr. Bullowa: I object to that. The witness has no knowledge on the subject—it is hearsay.

A. I don't know of any difficulties with the control stations.

1878 Q. Well, is it not a fact, that you had complaints from passengers that they were informed at the various control stations that their tickets were invalid and they could not use them? Will that paper refresh your recollection at all in that regard (handing witness paper)?

Mr. Beers: That is objected to as leading.

A. I have investigated this case and found that it was the Hungarian Government that prevented passengers from proceeding to Rotterdam.

*Paul G. Fourman*

1879

Q. Mr. Fourman, what is your information as to whether or not the German Government or officers thereof are interested in the Hamburg-American Line and the Holland-America Line?

Mr. Spooner: Objected to as incompetent.

Q. What is your understanding about that, Mr. Fourman?

Mr. Spooner: Do you know anything about it?

The Witness: About what, Senator?

Mr. Spooner: About whether the German Government owned any interest?

1880

The Witness: I don't know.

By Mr. Dorr:

Q. You don't know the Russian Government had any interest in the Russian Volunteer Fleet of your own knowledge, do you, Mr. Fourman, you have not been an officer of the Russian Government, have you? A. I do know that the Russian Government has an interest in the Russian Volunteer Fleet.

Q. You know that of your own knowledge? A. Of my own knowledge.

Q. You are an officer of the Russian Volunteer Fleet, and have been, and have seen contracts of the Russian Government with the line? A. No, I have not seen any contracts, but I know the Russian Government has an interest, or is interested in the Russian Volunteer Fleet.

1881

Q. As to the German Government and the Hamburg-American Line or North German Lloyd Line, what is your information as to that line?

Mr. Burlingham: I object on the ground that the question is vague and indefinite, and on the further ground that the witness has already said he knows nothing about it.

*Paul G. Fourman*

1882

Q. What is your understanding on that point, Mr. Fourman?

Mr. Spooner: That is objected to. Ask him if he knows.

Mr. Dorr: I have asked him that question.

Mr. Spooner: You are cross-examining now and we object to the question.

Mr. Dorr: You have made your objection, as we understand it, as I understand it, you have made your objection. I am asking the question now, Mr. Fourman.

1883

Q. Will you answer my question? A. I don't know.

Q. You have already told me that. Now, what is your understanding about it?

Mr. Bullowa: Objected to.

A. Absolutely no knowledge.

Q. You have never heard anything on the subject at all?

Mr. Burlingham: Objected to.

Mr. Dorr: I am testing this witness's recollection.

1884

Q. Go ahead, Mr. Fourman?

Mr. Spooner: I object to that, the witness having testified that he had no knowledge.

A. I don't know.

Q. You have already answered that. Now, please answer my question; have you or have you not heard it as a matter of common report in the steamship business in which you have been employed in the last six years, that the German Government was back of the Holland-Amerika Line and had financial interest in it or officers of the German Government, and

had a financial interest in the Hamburg-American Line? A. Never heard of it.

Q. You never heard any such report at all? A. No.

Q. Although you have been in the steamship business in this port for six years? A. Yes, sir.

Q. And the same as to the North German Lloyd? A. The same as to the North German Lloyd.

Q. Have you ever heard that any officer of the German Government had an interest in the Holland-Amerika Line? A. I don't know.

Q. Have you ever heard? A. No, sir.

1886

Q. Never heard? A. No, sir.

Q. And as to the North German Lloyd? A. No, sir.

Q. And as to the Hamburg-American Line? A. The same thing.

Q. You are quite sure about that, Mr. Fourman? A. Quite clear.

Q. Now, Mr. Fourman, as to these control stations and the objection to use of your tickets, have the reports which you have received, complaints which you have received been to the effect that the German Government prevented your passengers from proceeding on their way or that the agents of the Conference Lines who were running these control stations turned tickets of your ships from Rotterdam to New York were invalid?

1887

Mr. Spooner: Objected to as leading and as calling for mere hearsay opinion of the witness.

A. Well, as I could see from the return tickets, they were stamped as I stated before by the control stations' agents, but in speaking to some of the passengers, I found that it has been done with the as-

*Paul G. Fourman*

1888

sistance of the government gendarmes of the police.

Q. Acting under the direction of the agents of the control stations? A. I could not say that.

Q. Has your line ever had any communication from the German Government in the matter? A. Not in New York.

Q. In every instance which you have received any complaint that your passengers were turned back with the statement that their tickets were invalid, there has been a Conference Line agent present, has there not?

1889

Mr. Spooner: Do you know that?

Q. From the reports you have received? A. I don't know; I could not tell you whether a Conference agent was present.

Q. Did not the passengers inform you that the persons who turned them back endeavored to sell them a ticket over one of the Conference Lines?

Mr. Spooner: Objected to as leading and hearsay.

A. Yes, sir.

1890

Mr. Dorr: I think that Senator Spooner went as far in inquiring into this witness's hearsay information on this matter as anyone could go, and I am merely following him and cross-examining. Cross-examination does not call for hearsay any more than direct.

Q. Now, Mr. Fourman, this difficulty with the getting your passengers past the control stations which were established by the Conference Lines continues right down to date, does it not? A. Yes, sir.

Q. Now, the tickets which you sell your passengers, are the tickets which call for the transportation of



the passengers across Germany? A. No, sir; from Rotterdam to New York only.

Q. That is the only ticket which the passenger has of yours which he presents to the control stations, is a ticket from Rotterdam to New York? A. Yes, sir; or to Halifax.

Q. Or to Halifax? And it is those tickets for Trans-Atlantic transportation that the agents of the control stations state are invalid? A. Yes, sir.

Q. And that it is necessary for the passenger to buy a ticket for the Conference Line? A. If he wants to proceed.

1892

By Mr. Spooner:

Q. They were to go through Germany, these passengers, by rail, were they not? A. Yes, sir.

Q. Do you mean to testify if these people had gotten to Rotterdam that there was any pretence that the ticket would not have been honored? A. The ticket would have been honored.

By Mr. Dorr:

Q. Of course, your line would have honored its tickets, would it not, Mr. Fourman, if a passenger had been able to get to Rotterdam to present them? A. The moment a ticket would have been presented to any of our officials at Rotterdam, the ticket would have been honored.

1893

Q. But the difficulty was that before your passenger got to Rotterdam, he was informed that the ticket was valueless, was he not? A. In some cases he was told that a ticket was not any good.

Q. Now, this ticket, Government Exhibit No. 54, issued to Mrs. Beckerman, in regard to which there is a letter in evidence from the agent of the North German Lloyd Line in Illowa to the effect that it was invalid, can you state whether or not that is a valid ticket of your line? A. This is a good ticket.

*Paul G. Fourman*

1894

Q. Where does the Austro-American Line run?  
A. Between New York and Trieste, and I think, touches some Greek ports, but I am not positive.

Q. Does that line to your information, have the assistance of the Austrian Government? A. I don't know, sir.

Q. I show you what purports to be a certain ticket of your line and ask whether that is one of the tickets which you have mentioned as having been returned to your line with the notation that it was useless? A. Yes, this is one of our tickets, and as I see inserted in indelible pencil "Zurück" which means "back," "Ottobachin," dated July 10, 1911, and signed by Arthur Oelsner.

Q. Is your information that Arthur Oelsner was one of the agents of one of the lines of the control stations? A. I think so.

Mr. Dorr: I offer that in evidence.

Mr. Spooner: I object upon the grounds it is incompetent and immaterial and not properly identified.

Q. What is this attached to it, the order? A. This is the purchaser's receipt.

1896

Mr. Dorr: I offer those in evidence.

Mr. Spooner: Same objection.

Marked Petitioner's Exhibit No. 182.

Mr. Dorr: There was one exhibit referred to in the testimony yesterday and which I was under the impression I had offered at the time, the advertisement of the sailing of the Lapland for January 22nd, reduced rate of \$22. I will offer that now in evidence and also a circular of the Red Star Line under date of January 1, 1910, for New York-Antwerp ser-

vice, containing the advertised rates. I don't know whether that was identified by the witness or not, but if there is any question about it, I will have it identified now. I offer that in evidence.

Marked Petitioner's Exhibits No. 183 and No. 184.

Mr. Dorr: That is all.

By Mr. Spooner:

Q. Mr. Fourman, if a person purchasing a prepaid ticket in New Britain from some point in Russia to the United States by way of Rotterdam, would that include a ticket by rail from the point of origin of the passenger to Rotterdam? 1898

Mr. Dorr: I object to that as a hypothetical question not based on any facts in the record. The witness has already testified that they did not sell prepaid tickets from the inland Russian points to Rotterdam.

Mr. Spooner: I did not hear that.

Q. Then you sold the prepaid ticket only to the ocean traffic? A. We are engaged only in the ocean traffic. 1899

Q. That, I know, but you sell no orders for the railroad tickets? A. We do not.

Q. That answers my question. Then a person who bought a prepaid ticket good from Rotterdam to New York would have to buy or provide in some way a rail ticket from the residence of the person to the port? A. Yes, sir.

Q. Now, this is one of your tickets (handing witness Petitioner's Exhibit 54)? A. Yes, sir.

Q. It is printed on the back of this ticket what I read to you: "According to the immigration laws

1900

*Paul G. Fourman*

of the United States contract laborers, insane persons, idiots, cripples, deaf mutes, blind persons, unmarried females, when pregnant, persons over sixty years of age, all diseased persons, all those liable to become a public charge are debarred from landing," that is a statement from the law of the United States at that time. I suppose now it is the same? A. To some extent.

1901

Q. And a person holding a steamship ticket and having purchased a rail ticket from a point in Russia to the sailing port would when he reached the German Line be examined with reference to whether any of these disabilities existed? A. He would be examined by our physician in Rotterdam.

Q. Yes, but suppose the German Government was not willing that he be transported through Germany? A. Then they would have to tell the passenger that he is sick and that he ought to go back.

Q. They would have to have him examined as to whether he complied with these provisions? A. We don't stop the German Government from examining persons.

Q. The German Government would not permit a person without a medical certificate to go through Germany?

1902

Mr. Dorr: There is no evidence of that sort in the record.

By Mr. Beers:

Q. Mr. Fourman, a citizen of Russia or subject of the Czar leaving that country to come to America has to have a passport, does he not? A. According to the Russian laws, yes.

Q. And that passport would disclose, would it not, whether the person was an emigrant from Russia and immigrant to the United States? A. No, not

*Paul G. Fourman*

1903

necessarily; he would simply state he was going outside of Russia.

Q. It is not difficult, to ascertain, is it, whether or not certain persons leaving Russia are in fact emigrants and immigrants to the United States? A. No, not unless they say so.

Q. These regulations of the German control stations apply to immigrants, do they not? A. I so understand them.

Q. You don't understand they apply to casual travelers passing back and forth in Russia and in Germany? A. I understand they apply to Russian emigrants going to the United States.

1904

By Mr. Burlingham:

Q. Do you remember that in 1904 or thereabouts a new law was passed in Germany with regard to this very matter? A. No, sir.

By Mr. Bullowa:

Q. Mr. Fourman, you instruct your agents to notify the intending passenger to go to Rotterdam via Basle, do you not? A. Our Rotterdam office does.

Q. So as to avoid the effect of the German control stations? A. Yes.

Q. So that if an emigrant leaves a point in Russia to come to this country he has to travel all the way from Russia to Rotterdam via Basle so that your physicians can determine whether he can be landed in this country? A. Yes.

1905

Q. And if your physicians determine that he cannot be landed in this country he has to forfeit the ticket and return to his originating point? A. A good many—

Q. Answer that question; would he forfeit it? A. Yes, sir.

1906

*Paul G. Fourman*

Q. So that if he went through Germany he would have a very much shorter journey before the question was determined whether he was fit as a passenger or not? A. Yes.

Q. You are not a hostile witness, are you? A. I don't understand your question.

Q. The District Attorney said you were a hostile witness to the Government.

Mr. Dorr: I made no such statement.

The Witness: I am absolutely not hostile to both sides.

1907 Q. Before you came here you have seen the District Attorney, haven't you? A. Yes.

Q. You conferred with him? A. Not exactly.

Q. Well, you gave him certain information? A. Whatever I was asked to give.

Q. Now, the steamers, the Neapolitan Prince and the Sicilian Prince formerly belonged to the Prince Line and operated on a line of steamers from Italy to this country? A. Yes.

Q. And the Prince Line was forced out of that business because these steamers did not comply with the requirements of the Italian Government? A. I don't know that.

1908 Q. You have heard that? A. No, sir. Pardon me, the United States Government has also something to say about steamers, and they see our steamers as well as they see others.

Mr. Bullowa: I move to strike out his answer as not responsive.

By Mr. Dorr:

Q. Did you ever hear that the reason why the Neapolitan Prince and the Sicilian Prince were taken off the Italian trade was that they were single screw steamers? A. I don't know.

*Paul G. Fourman*

1909

Q. Haven't you heard that the requirement which led to the Sicilian Prince and the Napolitan Prince leaving the Italian service was that the Italian service required that emigrant ships be twin screw? A. I understand so.

Q. Are all the ships engaged in the North Atlantic steerage traffic employed by the conference line twin screw? A. Not all.

Q. There are ships of various lines that are single screw, are there not? A. I think so.

By Mr. Bullowa:

Q. Which one; specify any one? A. The Birma.

1910

Q. She is not in the passenger service? A. But she was up to two weeks ago.

Q. Is that the only one? A. I don't know. Some expert in the steamship business might tell you that.

By Mr. Dorr:

Q. Aren't there a number of such steamers? A. I understand there are a number. They are being replaced by new steamers now.

Mr. Dorr: That is all, Mr. Fourman.

Mr. Spooner: In response to the subpoena served on the Hamburg-American officials, dated June 23rd, to produce certain papers therein designated, I produce all that they were able to find, as follows:

1911

Circular of Hamburg-Amerika Line to agents, dated March 25th, 1908, covering through rates to special points of Europe, outward steerage Pretoria, leaving Saturday, April 11th, 1908, reduction to \$23, New York to Hamburg.

Also circular of October 5th, 1909, reduction steerage, outward rate, steamship Graf Waldersee, reduced to \$22.

1912

Also circular Hamburg-Amerika Line, October 6th, 1909, outward rate, reduced to \$22, steamship Graf Waldersee.

The next is the Graf Waldersee, dated January 8th, 1910, steamship sailed January 15th, 1910, steerage outward rate \$24, commission \$2.

Another Hamburg-Amerika Line, reduction in the steerage outward rate, steamship President Lincoln, January 24th, 1910, sailing New York to Hamburg, January 29th, 1910, reduced to \$22, steerage rate, commission \$2.

1913

Another President Grant reduction of steerage outward rate, sailing New York to Hamburg, February 5th, 1910, steerage outward rate reduced to \$22, commission \$2; January 31st, 1910, date of the circular.

Another steamship, Graf Waldersee, Hamburg-Amerika Line, sailing August 18th, 1910, reduction in steerage outward rate to \$27, commission \$2.

Steamship Amerika, November 17th, 1910, sailing November 24th, 1910, steerage outward rate to Hamburg reduced to \$22, commission \$2.

1914

New York, December 19th, 1910, steamship Pennsylvania, New York to Hamburg, December 22nd, 1910, steerage outward rate reduced to \$26, commission \$2.

Hamburg-Amerika Line, Steamship America, December 30th, 1910, New York to Hamburg, sailing January 5th, 1911, steerage outward rate to Hamburg reduced to \$26, commission \$2.

February 24th, 1911, Steamship America, New York to Hamburg March 17th, 1911, outward steerage rate reduced to \$29, commission \$2.



Hamburg-Amerika, March 11th, 1911, 1915  
Steamship Victoria, New York to Hamburg,  
Thursday, March 16th, 1911, steerage out-  
ward rate reduced to \$29, commission \$2.

Augusta Victoria, May 20th, 1911, same  
ship, New York to Hamburg, May 25th, 1911,  
steerage outward rate reduced to \$29, commis-  
sion \$2.

December 18th, 1911, Steamship President  
Lincoln, December 21st, 1911, New York to  
Hamburg, steerage outward rate to Hamburg  
reduced to \$23, commission \$2.

December 30th, 1911, Steamship America,  
New York to Hamburg, January 6th, 1912, 1916  
steerage outward rate reduced to \$25, commis-  
sion \$2.

May 18th, 1912, Steamship Pennsylvania,  
New York to Hamburg, May 23rd, 1912, steer-  
age outward rate reduced to \$25, commission  
\$2.

Steamship Cleveland, New York to Ham-  
burg, June 20th, 1912, steerage outward rate,  
reduced to \$25, commission \$2.

I also produce European railroad tariff  
Hamburg-Amerika Line September 1st, 1901.  
European railroad tariff Hamburg-Amerika  
Line, May, 1909.

European railroad tariff Hamburg-Amerika 1917  
Line, April, 1910.

Those are all of those papers we have been  
able to find.

Mr. Dorr: I will ask that with the excep-  
tion of the last three that those exhibits be  
marked and that the last three be marked for  
identification.

Marked Petitioner's Exhibits 185 to 201 in-  
clusive and Petitioner's Exhibits 202, 203 and  
204 for identification.

1918

Mr. Burlingham: In response to the subpoena to the Holland-Amerika Line, dated June 25th, I produce European railroad tariff of July 1911, published by the Holland-Amerika Line.

Mr. Dorr: I ask that that be marked for identification.

Marked Petitioner's Exhibit 205 for identification.

1919

Mr. Burlingham: I have a number of other railroad tariffs published by railroad lines, but I do not understand you want them. As to the rest of the subpoenas calling for circulars, showing our advertised steerage rates, may I ask whether you refer to those issued by the Holland-Amerika Line?

Mr. Dorr: Yes.

Mr. Burlingham: I have a large number here which I will produce and have them marked for identification.

Mr. Dorr: I suggest that they be marked for identification as one exhibit.

Mr. Burlingham: But they run only from 1908 to 1912 and your subpoena calls for them for 1906 and I am informed that they have none prior to 1908.

1920

Mr. Dorr: Just one question in regard to the subpoena to the Hamburg-Amerika, I notice the circulars which they have produced all appear to be circulars for the reduced rates. The subpoena as I recall it covered the circulars for the original rate of those steamers as well as the reduced rates. I may be in error about that.

Mr. Spooner: It says original and supplemental; they have given me all they have.

Mr. Dorr: Perhaps they did not observe that particular clause.

Mr. Spooner: I will call their attention to that.

